

FEBRUARY 2016

# EAST HARLEM *Neighborhood* PLAN

## APPENDIX D – RESEARCH

Office of City Council Speaker Melissa Mark-Viverito  
Manhattan Community Board 11  
Community Voices Heard  
Manhattan Borough President Gale A. Brewer

[EASTHARLEMPPLAN.NYC](http://EASTHARLEMPPLAN.NYC)

**PREPARED FOR**

The East Harlem Neighborhood

**PROJECT PARTNERS**

Office of City Council Speaker Melissa Mark-Viverito  
Manhattan Community Board 11  
Community Voices Heard  
Manhattan Borough President Gale A. Brewer

**STEERING COMMITTEE**

32BJ Service Employees International Union  
Artimus Construction  
CIVITAS  
Community Voices Heard  
Construction & General Building Laborers Local 79  
Councilmember Inez Dickens  
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Elmendorf Reformed Church  
El Museo del Barrio  
Harlem RBI  
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Manhattan Borough President Gale Brewer  
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**Appendix D** is an assemblage of research materials that helped inform the East Harlem Neighborhood Plan (EHN). While this appendix may not comprehensively enumerate all of the research tasks involved in formulating the objectives and recommendations of the EHN, it does include the key documents that directly shaped them. The appendix organizes the research documents by subgroup topic. Research was assembled through the combined efforts of Project Partners and Facilitators. This effort also included the assistance of the Neighborhoods First Fund for Community-Based Planning Technical Assistance Providers, comprised of the Association for Neighborhood and Housing Development, Center for Urban Pedagogy, Community Development Project at the Urban Justice Center, Pratt Center for Community Development and Hester Street Collaborative.

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# OPEN SPACE AND RECREATION – ADVOCACY FOR A COMMUNITY GARDENS DISTRICT

Source: LUNGS – Loisaida United Neighborhood Gardens - <http://www.lungsny.org/>

## Support the Community Gardens District in CB3

<http://www.lungsny.org/?p=654>

Posted on [January 29, 2015](#) by [admin](#)

TONIGHT we go before Community Board 3 with a proposal to establish a Community Garden District on the Lower East Side. We have 46 community gardens within a square mile, they are run strictly by volunteers. The status of the gardens are fragile given the immense pressures for development. We need your support, numbers matter. Please take a moment and sign this online petition below to support our proposal.

<https://www.change.org/p/city-of-new-york-establish-a-community-gardens-district-that-includes-all-community-gardens-within-community-board-3-and-map-and-designate-these-gardens-as-parklands>

## Support for the Community Gardens District

<http://www.lungsny.org/?p=647>

Posted on [January 13, 2015](#) by [admin](#)

By now you should all know that there is a proposal afoot to create a Community Gardens District in our neighborhood. This week the Parks Committee of Community Board 3 will be voting on the proposal.

This is the first very important step in a long process which we hope will ultimately insure permanence for all 46 of our gardens.

If the committee approves the proposal, it will then go before the entire Community Board by the end of this month. If CB3 votes in favor, Rosie Mendez will introduce a bill of similar intent in the City Council.

Right now we need to stand together to make sure this passes in CB3. This opportunity that we can't afford to squander.

Support and momentum have been building for a Community Gardens District. Manhattan Borough President Gale Brewer has said she would support the proposal if CB3 votes in favor. This may be the only chance we get to have the City to formally protect our gardens and to recognize the significance they play in our unique community.

Please show your support by coming to the BRC Senior Services Center – 30 Delancey Street (btwn Chrystie & Forsyth Sts) this Thursday, January 15 at 6:30pm.

Many gardens have written letters of support for creating the Community Gardens District. If your garden hasn't written a letter yet there is still time. Send your letters to Ayo Harrington at [ayoharrington@aol.com](mailto:ayoharrington@aol.com).

*BELOW IS THE PROPOSAL BEING INTRODUCED ON THURSDAY–We NEED People to Come out in support of this effort . THINK GREEN–STAND TALL  
Coalition to Establish a Community Gardens District*

Proposal: We seek to establish a Community Gardens District to include all community gardens located within the boundaries of Community Board 3 (CB3), in Manhattan. These gardens would be mapped and designated as parks land, named a special district and continue to be managed by community based volunteers.

Background: CB3 is the birthplace of community gardens in New York City and New York State. The very first one was established in CB3, in 1973, by local resident and artist, Liz Christy.

Working to reverse years of decline and neglect by public and private property owners, Christy began seed bombing (mud balls filled with seeds) abandoned, rubble strewn lots in an effort to improve her own environment and create public green spaces. Not satisfied with just seed bombing, Christy gathered friends and fellow artists to reclaim and clear one such lot on East Houston Street – between Bowery and Second Avenue – to turn into a community garden. Originally named “Bowery-Houston Farm and Community Garden”, after her death in 1985 it was renamed in her honor as the “Liz Christy Bowery-Houston Garden”.

Christy and her fellow activists founded the urban gardening group, Green Guerillas, and Christy went on to become the first Director of the Council on the Environment of New York City's Open Space Greening Program which is named now and branded as Grow NYC. Today, the Green Guerillas remain the City's oldest gardening organization and continues to “cultivate partnerships between people who care about the earth and believe in the power of community gardening to transform neighborhoods.”

At one time, there were fifty seven registered community gardens in CB3 and dozens more operating on their own. However, as the neighborhood evolved, gardeners were forced to fight for the very land they spent incalculable hours and resources developing as real estate speculators were handed lots for practically nothing. Sadly, gardens were bulldozed, one by one.

Status: There are still forty-six community gardens located in CB3 giving CB3 the distinction of having the highest density and concentration of community gardens in New York City, New York State and perhaps the country. The City-owned community gardens are mostly housed under the jurisdiction of the Department of Parks and Recreation giving the illusion that they are permanent. They are not. Whether housed under Parks, Sanitation or HPD, as some are, no CB3, City-owned community garden is mapped as parks land or otherwise designated as being permanent. Even with the storied history and widely acknowledged benefits of community gardens, all City-owned community gardens are still documented in City records as vacant lots and are subject to revocation at any time.

Conclusion: Community Board 3 has been strengthened by the history of its community gardens which hold the distinction of having a forty one year old, deep rooted history solidly ingrained in the fabric of our community. Today, the Liz Christy Bowery-Houston Garden and its history are studied and known worldwide. It and other CB3 community gardens have become New York City destinations. Year after year the soil is worked, flowers are planted, food is grown, events are planned, meetings take place, neighbors interact, memories are made, and our community is strengthened.

Given the significance of the gardening movement history that is particular to CB3, along the uniqueness of highly concentrated gardens, these community gardens should be mapped and designated as parks land, named a special district and continue to be managed by community based volunteers.

## OPEN SPACE AND RECREATION – SCHOOLYARDS TO PLAYGROUNDS

Source: <http://www.nycgovparks.org/greening/planyc/schoolyards>

Below is a description of the Schoolyards to Playgrounds program:

“Hundreds of schoolyards have been renovated and opened to the public during non-school hours through the Schoolyards to Playgrounds program. We’re working with the Department of Education and the nonprofit Trust for Public Land to improve many of the schoolyards through capital improvements, including play equipment, painted sports surfaces, trees, and benches.

Schoolyards that participate in Schoolyards to Playgrounds receive improvements such as sports courts, play equipment, trees, and benches before they open to the public. Here are just two examples of public school playgrounds before and after they were brought into the Schoolyards to Playgrounds program.”

### **Hours of Schoolyards to Playgrounds:**

**Monday – Friday:** School close until dusk

**Saturday, Sunday, & holidays:** 8:00 a.m. until dusk.

# ARTS & CULTURE - SOCIALLY AND CULTURALLY SIGNIFICANT BUILDINGS

Source: PLUTO 2015, NYC Bytes of the Big Apple





**EAST HARLEM Neighborhood PLAN**

LPC Designations



#1, Manhattan Country School, 7 East 96th Street



#2, Expanded Carnegie Hill Historic District, 17 East 96th Street



#2, Expanded Carnegie Hill Historic District, 2 East 98th Street



#2, Expanded Carnegie Hill Historic District, 1158 5th Avenue



#2, Expanded Carnegie Hill Historic District, 1160 5th Avenue



#2, Expanded Carnegie Hill Historic District, 9 East 96th Street

LPC Designations



#2, Expanded Carnegie Hill Historic District, 1170 5th Ave #2, Expanded Carnegie Hill Historic District, 1150 5th Avenue



#2, St. Nicholas Russian Orthodox Cathedral, 15 East 97th Street

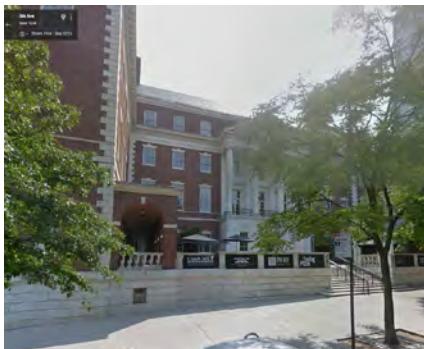
#3, Langston Hughes House, 20 East 127th Street



#4, St. Andrew's Church, 2061 5th Avenue

#5, Fire Hook & Ladder Company No. 14, 120 East 125th Street

LPC Designations



#6, Museum of the City of New York, 1220 5th Avenue

#7, New York Public Library - Aguilar Branch, 172 East 110th Street



#8, The Harlem Courthouse, 142 East 121st Street



#9, New York Public Library - 125th Street Branch, 226 East 125th Street



#10, Public School 72, 1680 Lexington Avenue



#11, Thomas Jefferson Play Center, 2158 1st Avenue

LPC Designations



#12, Mount Morris Bank Building, 81 East 125th Street

#13, St. Cecilia's Convent, 116 East 106th Street



#14, Fire Engine Company No. 53, 175 East 104th Street #15, 17 East 128th Street House, 17 East 128th Street



#16, Church of All Saints (Roman Catholic), Parish House and School, 41 East 129th Street



#17, Lucy D. Dahlgren House, 15 East 96th Street

LPC Designations



#18, 28th Police Precinct Station House, 177 East 104th Street



#19, Watch Tower, 18 Mt. Morris Park West



#20, St. Cecilia's Church, 120 East 129th Street

**EXISTING**

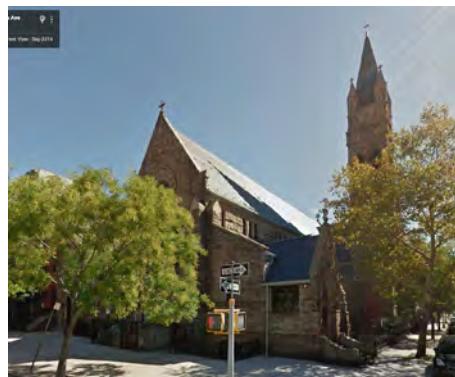
- Dept of Parks & Rec Public Open Spaces
- Lots with Religious Uses
- Landmarked Lots with Religious Uses

**EAST HARLEM Neighborhood PLAN**

Churches



#1, Church of All Saints, 47 East 129th St.



#2, St. Andrew's Church, 2061 5th Ave.



#3, St. Cecilia's Convent, 116 East 106th St.



#4, St. Nicholas Russian Orthodox Cathedral, 15 East 97th St.



**EXISTING**

- Dept of Parks & Rec Public Open Spaces
- Other Significant Structures

**EAST HARLEM Neighborhood PLAN**

Other Significant Structures



#1, Islamic Center of New York, 1711 3rd Ave.



#2, Engine 53, Ladder 43, 1836 3rd Ave.



#3, Rao's, 265 Pleasant Ave.



#4 Our Lady Mt. Carmel Church, 438 East 116th St.



#6, Apple Bank for Savings, 128 East 125th St.



#6, Red Carpet Theater, 211 East 122nd St.

Other Significant Structures



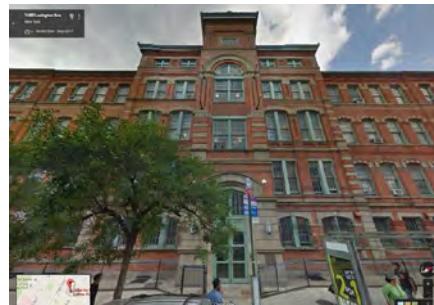
#7, The Young Lords Headquarters, 1309 5th Ave.



#8, Manhattan Center for Science and Mathematics, 260 Pleasant Ave.



#9, National Black Theater, 2023 5th Ave.



#10, Julia de Burgos Theater, 1680 Lexington Ave.

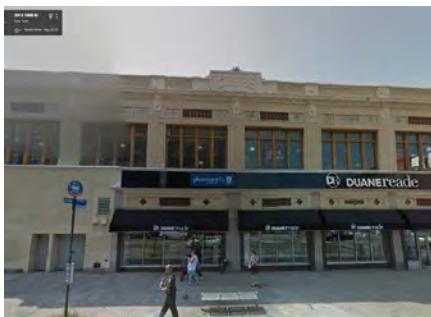


#11, Patsy's, 2287 1st Ave.



#12, New York Academy of Medicine, 1216 5th Ave.

Other Significant Structures



#13, Kress Building, 1913 3rd Ave.



#14, El Museo del Barrio, 1230 5th Ave.



#15, The National Jazz Museum in Harlem, 106 East 126th St.



#16, Primera Iglesia Bautista, 216 East 116th St.



#17, Eagle Theater (Closed), 1852 3rd Ave.



#18, Young Lords Activism Site - People's Church, 163 East 111th St.

Other Significant Structures



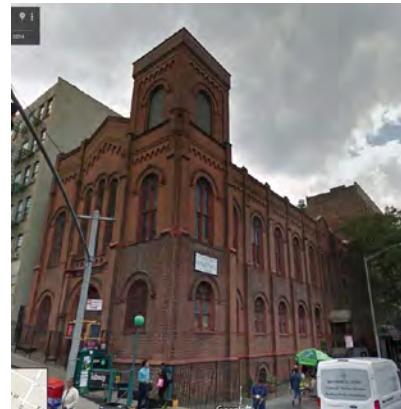
#19, 2118 2nd Ave.



#20, First Sharon Baptist Church, 233 East 116th St.



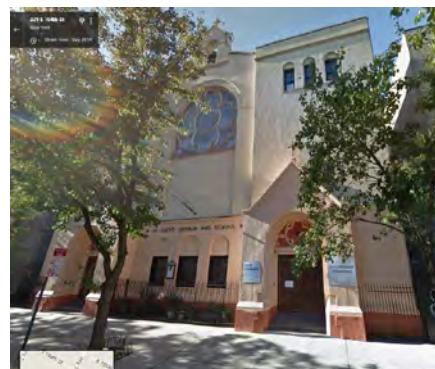
#21, Fire Factory, 1367 5th Ave.



#22, St. George and Demetrios Greek Orthodox Church, 1630 Lexington Ave.



#23, Richard Rogers Amphitheater, 18 Mt. Morris park West

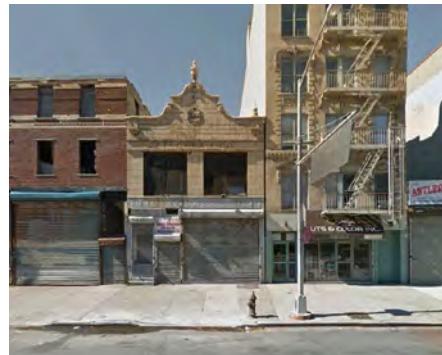


#24, St. Lucy's Church and School, 342 East 104th St.

Other Significant Structures



#25, Poets Den Theater, 305 East 108th St.



#26, Fischer and Co. Pure Pork Products, 2291 2nd Ave.



#27, Mt. Zion AME Church, 1765 Madison Ave.

# HOUSING PRESERVATION – POLICY PAPER ON TAX LIEN SALE REFORM

Source: Association for Neighborhood and Housing Development (ANHD)

## **Creating a new affordable housing pipeline – recommendations for multifamily preservation and new development sites through Tax Lien Sale reform.**

### **I. Overview of the Tax Lien Sale and Third Party Transfer Program**

Properties that have outstanding real estate taxes, emergency repair charges, or water/sewer charges are placed in the City's tax lien sale pipeline. The City's tax lien sale happens annually, in May. Property owners with outstanding debts are notified 90 and 60 days prior to the lien sale, and the list of buildings is publicized on Department of Finance's website. Many of the debts on these properties are redeemed by the current owner prior to lien sale; other properties are removed from the lien sale by the City because they meet the city's statutory definition of distress. For the properties that remain, the balance of the outstanding debts owed to the City is bundled and sold at tax lien sale to an authorized purchaser. The purchaser of the tax liens then gives property owners another chance to pay their debts and redeem their properties; many do and often at an amount higher than the lien itself (the purchaser can tack on interest rates as high as 18%) generating revenue for the City. For properties that do not pay off the liens, the authorized bulk purchaser then initiates foreclosure and auctions those properties off to the highest bidder.

Properties that are removed from the lien sale because they are distressed are targeted for rehabilitation and affordable housing preservation through the Third Party Transfer (TPT) program. Under TPT the City gives the owner additional time to redeem outstanding liens before initiating tax foreclosure itself. Upon foreclosure, ownership is transferred to Neighborhood Restore HDFC, a non-profit organization, which, in turn, works with qualified non- and for-profit developers to stabilize, manage, and plan for the rehabilitation and future ownership of the buildings.

### **II. Missed Opportunities and Added Distress**

The City currently removes buildings that meet certain criteria from the lien sale, conceding that the possibility of a tax foreclosure could further destabilize buildings that are already at-risk. HPD recommends that the Department of Finance remove extremely distressed buildings (4 or more B/C violations per unit) and properties where tax liens exceed 15% of the property value.

<b>Buildings with Rent Stabilized Units in the Tax Lien Sale</b>		
	<b>Number of Buildings</b>	<b>Number of Units</b>
<b>2012</b>	97	1467
<b>2013</b>	111	1780
<b>2014</b>	96	1460

*Source: NYC Department of Finance; NYS Housing and Community Renewal*

In buildings where liens are sold, the compounding 18% interest rates actually forces the building owner – whether it is the current owner or a new purchaser -- to overleverage the building by taking out an egregious amount of private debt to pay the liens.

The University Neighborhood Housing Project's Building Indicator Project (BIP) uses a number of criteria, including debt levels, to evaluate building distress in New York City. Using BIP Score as a measure of distress, we found that of the 97 rent stabilized buildings that went through the lien sale in 2012, 73 of them were more distressed one year after the lien sale. 66 of them were more distressed two years after the lien sale. Of the 111 buildings with rent stabilized units that went through the lien sale in June 2013, 94 of them saw an increase in distress measured by an increase in the BIP score by June of 2014. These buildings are home to 2,687 families.

<b>Increased Distress through Lien Sale</b>		
	<b>Rent Stabilized Buildings in Tax Lien Sale</b>	<b>Buildings where distress increased 1 year after lien was sold</b>
<b>2012</b>	97	73 (75%)
<b>2013</b>	111	94 (84%)

*Source: UNHP Building Indicator Project*

Buildings that go through the lien sale are often physically distressed, causing us to question what impact the lien sale has on building conditions. From our analysis, buildings that go through the tax lien sale continue to drain city resources and continue to not pay outstanding debts. By January of 2015, 44 of the 97 rent stabilized properties that went through the lien sale in 2012 owed new outstanding municipal debt. 75 properties whose debt was sold in 2013 owed municipal debt once again in January of 2015. 25 buildings that went through the lien sale between 2012 and 2014 are in the City's Alternative Enforcement Program as of January 2015. These buildings continue to cost the City money to maintain, and continue to put the health and safety of City residents at risk.

An egregious example of the City's lost preservation opportunities, and the impact it can have on residents, can be seen at 180 Linden Boulevard. 180 Linden Boulevard went through the tax lien sale in June of 2012. In January of 2015, the 36 unit property has accrued an additional \$537,523 in municipal debt and is facing private foreclosure. Furthermore, the 36 unit building has 222 open code violations, is in the Alternative Enforcement Program and is on the Public Advocate's Worst Landlord List. The building is located in South Crown Heights/Flatbush, a rapidly gentrifying neighborhood. Had the City intervened in 2012 at the time of lien sale, this property could have been rehabilitated and preserved as affordable housing via a low cost loan and a City regulatory agreement. Instead, tenants have suffered a harassment at the hands of a slumlord and the City has been on the hook for crucial repairs.

### III. Solutions

It is critical that HPD find a way to leverage municipal debt to preserve more housing. Creating opportunity for the preservation minded developers to not pay liens allows for non-profits more leverage against speculators and reduced the additional subsidy the City would have to provide to make preservation deals financially competitive.

The tax lien sale both misses an opportunity for affordable housing preservation and has a detrimental effect on rent stabilized housing. The City should amend its qualifications for which properties are sold in the annual lien sale through an expanded Third Party Transfer program. By expanding the Third Party Transfer we can capture and preserve much of this distressed housing. The program should expand to:

- **All distressed buildings with outstanding AEP or ERP municipal debts.** By increasing the interest rate on HPD liens to match water/sewer charges, distressed buildings can move seamlessly through AEP to 7A to long term affordable housing.
- **All vacant buildings, or vacant land, which could be feasible as new affordable housing.** With city-owned development sites dwindling, obtaining a development site for the price of a tax lien is almost always much cheaper than the city subsidy it would take to subsidize the acquisition of a comparable site for an affordable housing developer.
- **All buildings which are currently occupied by low-income tenants.** Low-income tenants should be allowed to petition the city for a Third Party Transfer disposition, instead of going into the Lien Sale. Upon a 90-day notice of lien sale, tenants could be notified that they have the right to this petition if they demonstrate that a majority are low-income, and that the buildings have rents low enough to qualify as low-income housing.
- **All occupied properties owned by not-for-profit corporations.** Not-for-profit corporations hold property in service of their missions, whether the provision of community services, like day cares and community gardens, or affordable housing. When such organizations fail to pay property taxes or apply for appropriate tax abatements and their debt is sold to private entities for collection and potential foreclosure, key community services are unnecessarily placed at risk. The tax lien sale allows properties acquired through charity and public money to become private properties when buyers of the tax debt foreclose. Through an expanded Third Party Transfer program, these resources could both be protected and transferred to a like-minded responsible non-profit. To protect community gardens and open spaces, when making this change, the statutory definition of “occupied” should include “in use as a community garden or open space.”
- **All HDFC housing, both rental and cooperative.** HDFCs represent a critical affordable housing resource, that the city has already invested significant subsidy into. In cases where HDFCs have tax and water/sewer liens through irresponsible management, putting these through an expanded Third Party Transfer program can both remove irresponsible ownership and management, as well as preserve the existing affordable housing and city investment.

#### IV. Further Reforms

- **Group TPT buildings in clusters** based on geographic proximity, and then transferring them together to a CLT or mutual housing association.
- Clearly state that the legislative intent and purpose of the Third Party Transfer program is to **create and preserve affordable housing.**
- Mandate the disposition of all buildings in the TPT program to **non-profit, community-based housing developers**, with a preference for **community land trusts**. Private developers could still partner with nonprofit organizations to develop the housing, as long as the ultimate disposition of the property is to a nonprofit organization.
- Require **permanent affordability** for all buildings moving through TPT.

# HOUSING PRESERVATION – RECOMMENDATIONS ON NEW YORK CITY TAX LIEN SALE

**Source: Association for Neighborhood and Housing Development (ANHD)**

## Recommendations on New York City Tax Lien Sale

Every May 15, the City of New York packages outstanding tax, water, and sewer liens into the New York City Tax Lien Trust, which sells the liens to private investors. Once a lien is sold, a lien servicer, working on behalf of these investors, takes on responsibility for collecting the debt. These companies charge homeowners additional fees, plus an interest rate of 9 to 18%, which compounds daily. These debts can have a devastating impact on a homeowner's personal finances and housing stability. If the homeowner does not pay the debt, the trust may move to foreclose on the lien.

The liens that are sold are heavily concentrated in communities of color, the same communities that have been hard hit by predatory lending and high rates of foreclosure (see attached maps). The lien sale process can lead to the displacement of longtime homeowners and renters in communities that are already facing extensive market pressure and speculation. New York State court records show that the 2013 New York City lien sale has resulted in at least 576 lien foreclosure actions (approximately 6% of properties on the 2013 sale list), while the 2012 trust filed 684 foreclosure actions, and the 2011 trust filed 869 actions. Many of the homeowners affected by the sale are members of vulnerable populations (such as seniors on fixed incomes) who lack the resources to maintain their homes and manage paying the exorbitant costs of sold liens.

While the sale of liens to private investors may generate short-term revenue for the City,<sup>1</sup> the negative repercussions of the sale outweigh the short-term financial gain. The displacement of longtime residents and the accompanying loss of affordable housing to profit-driven investors is inconsistent with the City's goals of promoting affordable housing and neighborhood stabilization.

### **Recommendations:**

The City's lien sale policy should seek to avoid displacement of low- and moderate-income homeowners when possible. In circumstances where the homeowner is unable to retain ownership, the City should preserve the property as affordable housing rather than letting these generally market-affordable properties become high-cost rentals or housing otherwise unaffordable to neighborhood residents.

In order to prevent displacement and preserve these homes and communities as affordable, we recommend the following:

#### **1. End the sale of liens on owner-occupied Class 1 properties.**

While provisions exist to exempt seniors, persons with disabilities, and veterans from the lien sale, homeowners who qualify for these exemptions do not always receive them or know that they are available. Additionally, current exemptions do not include a provision for homeowners who are low-income and/or experiencing economic hardship. Displacement of lower income homeowners carries

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<sup>1</sup> In the 2014 Lien Sale, the total value of the 5,348 liens sold was \$115 million. Of these, 2,792, or 52%, were for Class 1 properties. The total revenue from Class 1 properties was \$34 million, comprising 29% of total revenue from the sale.

high costs for the City, particularly as it increases the loss of affordable housing and longtime residents. Given the hardships and increased foreclosure risk caused by the lien sale, we believe an exemption for owner-occupied Class 1 properties is the optimal solution.

**2. Provide more flexible payment options to low-income homeowners.**

Owners of Class 1, owner-occupied properties who do not have the means to pay off a lien should be offered an affordable, means-based payment plan by the Department of Finance or Department of Environmental Protection. Qualification for the program should be based on an assessment of household income and expenses, as well as household composition. The homeowner would be required to make timely payments on tax and water bills in order to remain eligible for the payment plans.

a) If the homeowner has no means to pay back the lien, then the homeowner should have the option to agree that the debt will be paid in full when the property is sold, transferred, or refinanced, and no affirmative payments will be required on the lien. (*Note: this option would essentially be an expanded version of DEP's pilot Water Debt Assistance Program*).

b) If the homeowner has limited means to pay back the lien in installments, then a portion of the lien can be paid in full when the property is sold, transferred, or refinanced; and the other portion of the tax lien will be subject to an affordable payment plan.

**3. Make it easier for homeowners to get off the lien sale list.**

Lengthen the window between the publication of the first lien sale list and the actual sale. Ensure that homeowners receive several communications through multiple channels and in multiple languages with a direct and clear explanation of the lien sale process and how to avoid the lien sale. The influence and access of trusted community groups should be leveraged to educate homeowners about the lien sale. Finally, on all communications to homeowners, provide contact information for the Center for NYC Neighborhoods' homeowner hotline, which can connect them with high-quality assistance at no cost to the homeowner.

**4. Create a lien sale ombudsman / "Homeowner Advocate"**

Navigating the various City agencies (primarily HPD, DOF, and DEP) involved in the lien sale process can be difficult for many homeowners. Creating a single point of contact for questions and concerns will improve success rates for homeowners trying to get off of the lien sale list. The ombudsman should be able to help homeowners submit exemption and payment plan applications, answer general questions about the lien sale, and provide homeowners with up to date information about the status of what they owe.

**5. Implement post-sale limitations on collection activities.**

It is critical to ensure that New Yorkers are treated fairly once their liens are sold. New York City law currently allows servicers to charge an interest rate of 9%, compounded daily, on homeowners after the lien is sold which imposes an additional financial hardship on homeowners. A one-year freeze on interest rate charges, and lower interest charges, more reasonably compounded, will make it easier for homeowners to obtain affordable repayment plans. Furthermore, the City should regulate repayment plans after a lien is sold and limit the amount of legal fees that can be included in the payoff amount.

**6. If owner-occupied retention is not possible, maintain the property as affordable housing.**

In instances where a homeowner enters into a payment plan for an initial default, and then further defaults on either the payment plan or additional property taxes, an alternative approach will be needed.

In these instances, the City should ensure that the home remains affordable by transferring the property to a nonprofit entity such as Neighborhood Restore, similar to the current Third Party Transfer (TPT) program, but without the need for substantial rehabilitation of the property. Liens would be forgiven, similar to the current TPT program. However, in order to ensure an eventual recovery of its investment, an enforcement mortgage in the amount of the forgiven liens would be put on the property and a regulatory agreement would be signed. Existing owner-occupants would remain in their home as tenants, and existing tenant-occupants would also be able to remain, under a regulatory agreement and outside nonprofit owner/manager. If necessary for sustainable operating costs, the property could also be granted a possible tax exemption.

Upon death or absence of the former owner-occupant, the property could remain as affordable rental housing, or be resold as low-moderate income homeownership, upon which the outstanding enforcement mortgage could be paid off. If the property is in need of rehabilitation, it could be put through the city's preservation programs as well.

This is also a very cost effective way to preserve affordable housing. Currently if a home is sold in the lien foreclosure auction sale, the property will likely be purchased by private investors or high-income individuals, rather than low- and moderate-income families, and the former homeowner will be evicted. Under this "TPT-lite" system, the housing is essentially preserved twice – once when the distressed homeowner is allowed to stay as a tenant, and a second time upon death or vacancy, when the property can be resold as affordable homeownership.

For the 2015 lien sale, the average amount of a lien was \$20,941. This is not the actual value of the liens, but the "adjusted redemption valuation," which accounts for both the amount of the actual lien as well as recoverable fees added onto it. As this accounts for property across all tax classes, it can be assumed that the average cost of a 1-4 family lien is well less than this, making a preservation program through Tax Lien Foreclosure extremely cost effective compared to other preservation programs.

In addition to this potential TPT-lite program, other options for obtaining affordable housing development sites and preservation opportunities through the tax lien sale should also be explored. For instance, developable vacant land with outstanding liens should be acquired outright by the city, and disposed of to not-for-profit affordable housing developers as development sites, instead of having their tax liens sold. As comparable development sites would almost certainly cost more than the tax lien (and those that don't could still have their liens sold), this would be another way of leveraging cost-efficient affordable housing development.

## HOUSING PRESERVATION - RIGHT TO COUNSEL NYC COALITION REPORT

Source: Right to Counsel NYC - <http://www.righttocounselnyc.org/resources>



# HOUSING JUSTICE

## What the Experts are Saying

On New Yorkers' Right to Counsel in Eviction Proceedings

Excerpts from a public forum organized by the Right to Counsel NYC Coalition  
and hosted by the Impact Center for Public Interest Law at New York Law School  
on December 5, 2014

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# INTRODUCTION

There is growing momentum for establishing a right to counsel in New York City for low-income people who face losing their homes in legal proceedings. The Right to Counsel NYC Coalition formed in 2014 to advocate for the right to counsel and its ranks have been steadily growing. New York City's political leadership has been outspoken on the importance of counsel in eviction proceedings and is taking major concrete steps to expand the availability of counsel. These include greatly increased funding for civil legal services and the City Council's passage, on May 27, 2015, of Intro 736, which establishes a first-ever Office of the Civil Justice Coordinator. Most importantly, the New York City Council and the de Blasio Administration are considering legislation that would make New York City the first jurisdiction in the United States to establish a right to counsel for low income people who face losing their homes in legal proceedings. The legislation, Intro 214, introduced by Councilmembers Mark Levine and Vanessa Gibson and co-sponsored by a wide majority of the members of the Council, would (with anticipated amendments) guarantee counsel to households below 200% of federal poverty guidelines in both eviction and foreclosure proceedings.

There are many compelling reasons for the City to take this bold and important step. Foremost among them are the enormous benefits it would bring to the families and individuals who face a threat to their homes through legal proceedings that are nearly impossible for the unrepresented to navigate. With a right to counsel, low-income people would be treated with dignity and respect, and would have a fighting chance in court to retain their homes by utilizing the laws that provide protections for housing conditions, limit rent increases, prohibit harassment, regulate subsidy programs, and place the legal burden on landlords to prove their cases.

The stakes are very high for low-income New Yorkers who face eviction. Close to 30,000 households are evicted by City Marshals each year, and an unquantified but much larger number give up their homes under the threat of eviction. All of these households are forced out of their homes into a housing market that leaves them few options. *Housing New York*, the Mayor's 2014 affordable housing plan, found that there are twice as many low income households as there are affordable housing units. Low-income people who are forced out therefore end up either homeless or in housing that is more expensive. Studies have shown that representation by counsel makes a huge, positive difference in outcomes. By enabling more people to stay in their homes, the right to counsel would protect and preserve the city's dwindling affordable housing stock and slow the loss of affordable housing.

By enabling people to stay in their homes, the right to counsel also saves the government money. Eviction is the largest single reason for homeless shelter entry, and the number of families in homeless shelters is at an all-time high. By preventing evictions and reducing shelter entry, the right to counsel would save far more money on sheltering homeless people than it would cost to provide counsel. But shelter costs are not the only way the City would save money: homelessness can also lead to other costs related to police/jails, claims for public benefits, and foster care for children.

Finally, we are living in a time of widely expressed concern that there are two New Yorks with two unequal systems of justice, one for the rich and the other for the poor. The de Blasio administration has made reducing economic inequality one of its major priorities. By guaranteeing a right to counsel, the City's political leadership can send a powerful message that basing access to justice on wealth, particularly with respect to something as important as loss of one's home, is simply unacceptable.

On December 5<sup>th</sup>, 2014 the Impact Center for Public Interest Law at New York Law School hosted *Housing Justice: A Public Forum on New Yorkers' Right to Counsel in Eviction Proceedings*. This all-day forum was organized by the Right to Counsel NYC Coalition to broaden and deepen the public discussion around the right to counsel and to provide an opportunity to hear from experts in law and public policy as well as from people with first-hand experience defending their homes in eviction proceedings. The forum included a series of panel presentations, in which bar leaders, judges, community members, members of academia and other experts presented and discussed their views. Panels addressed: the impact that the right to counsel would have on housing and homelessness, public welfare, and the administration of justice, as well as what could be learned from experiences throughout the country and around the world. This report contains excerpts from the day's discussions. All statements were reviewed and approved by the persons quoted.

We hope that this report will be of use to all who take an interest in this important issue, but especially to policymakers as they contemplate taking the bold, historic step of establishing a right to counsel for low-income people who face losing their homes.

## **Andrew Scherer**

Policy Director  
Impact Center for Public Interest Law  
New York Law School  
May, 2015

# IT MUST BE A RIGHT

## Cathy Albisa

National Economic and Social Rights Initiative

"We have a history in New York of progressive activism, progressive ideas and social justice. New York has to lead the way."

## Andrew Scherer

Impact Center for Public Interest Law at NYLS

"Once people have a right, it is very hard to take a right away. Making it a right will make an enormous difference."

"This is the next important step that needs to be taken; it's such an important area of human rights and NYC can lead the nation in making it happen."

## Honorable Jonathan Lippman

Chief Judge for the State of New York

"Legal representation for the poor is as important as schools, hospitals, and all the things that we hold dear. Our government and our society have to make that commitment. We have to change people's viewpoint about the importance of legal services to preserving the fundamentals of life."

## Debra Raskin

New York City Bar Association

"The NYC Bar Association for decades has been committed to the concept of access to justice; without meaningful legal representation there is in fact no access to justice. It's essential that litigants who cannot afford a lawyer can obtain representation, someone with legal training to navigate the morass of laws that control proceedings in the Housing Court and allow people to protect fundamental rights."

"Our support for the right to counsel is evidence-based policy. This is based on statistics. This is based on numbers. This is based on the realities in Housing Court."

## Martha Davis

Northeastern University School of Law

"Many of our peer nations recognize the ways in which lack of access to civil counsel exacerbates inequality and distorts democracy and they've responded aggressively in prioritizing the issue and recognize that housing is one of the most critical needs in this regard. The US lags behind these peers."

## Shanequa Charles

Community Action for Safe Apartments

"Housing should no longer be looked at like a commodity. It should be a human right to have a roof over your head. Funding the right to counsel is an absolute necessity."

## John Pollock

National Coalition for a Civil Right to Counsel

"The right to counsel and the right to housing are both critical. We have to make it clear when talking about both things that what is at stake in a housing case is not just your apartment. If people think that, they are not seeing and understanding the whole picture. And the right to counsel is the means to protect the really important right, the right to housing."

"Does counsel make a difference in certain kinds of cases? Massachusetts completed a set of eviction pilots just a few years ago. The pilots studied two different courts, district court and Housing Court. Prior to these pilots, one study had found that Massachusetts tenants without counsel retained possession only 2% of the time. The pilot study found that at one of the sites, tenants with counsel retained possession 66% of the time. The group at that same site that got only 'assistance' instead of full representation did half as well as that. It was the full representation that made the difference."

"If landlords knew ahead of time that every single tenant in that courtroom would have representation, do you think the bad landlords will still try doing whatever it is they are thinking about doing in the first place? They won't bring the frivolous lawsuit; they won't refuse to do the repairs, because they know if they go to court, they are going to lose. And the impression the study designers got in San Francisco was that the more systemic the representation, the more they saw landlord attorneys willing to negotiate instead of taking a hard line. That is systemic change. That's why it is so important. Every tenant, every time, as long as they are indigent, should have the right to counsel. Period."

## Kate Donald

Center for Economic and Social Rights

"Under international human rights standards, access to legal aid or free legal assistance is required in civil cases when human rights are at stake, as they clearly are in tenancy disputes and eviction decisions."

"The UN Special Rapporteur on the Right to Housing, an independent expert appointed by the UN Human Rights Council to monitor the enjoyment of that right, has clearly stated that providing legal aid is an important part of ensuring that human rights are not violated in eviction proceedings."

**Commissioner Steven Banks**  
New York City Human Resources Administration

"In terms of what it really means to implement the right to counsel — and I know that there are challenges as people grapple with our approach with the expansion of implementing a provision of counsel of program — we also have to understand the speed and the urgency of doing things and sometimes the perfect is the enemy of the good."

**Glenn Lau-Kee**  
New York State Bar Association

"It is the official policy of the NYS Bar Association to support a right to counsel for vulnerable, low-income people who face eviction or foreclosure from their homes and this is saying something."

**Lewis Tesser**  
New York County Lawyers' Association

"New York County Lawyers Association has a justice center which each year addresses the most substantial public problems that we face. This past October marks the tenth anniversary of NYCLA's justice center conference exploring issues facing NY's Housing Court crisis in the 21<sup>st</sup> century. In the aftermath of that conference, NYCLA passed one of the first policy resolutions calling for a right to counsel for all New Yorkers facing eviction proceedings who could not hire an attorney. In the ten years since we passed that resolution, NYCLA has reaffirmed that commitment on multiple occasions calling for greater representation of low income tenants."

**John Pollock**  
Coordinator  
National Coalition for a Civil Right to Counsel

**There cannot be any question that housing is a basic human need, and that the loss of housing can affect other basic human needs, such as health, safety, and child custody. Nor should there be any question that something needs to be done for the thousands of New Yorkers who struggle through the eviction and foreclosure process without a lawyer to defend them. This problem is made worse by the fact that banks and landlords are represented virtually all of the time while low-income homeowners and tenants rarely are.**

When homeowners and tenants have counsel, they are far more likely to preserve their housing, and it makes the proceedings more fair. But also, when cities and states refuse to pay for counsel, they instead can wind up paying even more money in other ways, such as on safety net services like shelters and hospitals for those who are removed from their homes. It's penny wise and pound foolish. The states and cities across the

country have taken steps to protect the right to counsel in some kinds of civil proceedings. For instance, most states guarantee counsel in cases involving termination of parental rights or the involuntarily commitment of those with mental illness. The City of San Francisco passed an ordinance declaring its goal to become the first civil right to counsel city and launched a pilot project to expand pro bono representation in foreclosure proceedings. And there are

ambitious pilot projects in California, Iowa, Boston, and Mississippi that are gathering data on the benefits of providing counsel to low-income litigants in cases involving housing, children, and domestic violence. But we have a long way to go as a country: a recent report by the World Justice Project ranked the United States 65th in the world on access to civil justice, tied with Uganda and Mongolia. This groundbreaking New York City legislation would make the city the first place anywhere in the country to guarantee counsel to low-income people in any sort of housing matter. New York State has been a national leader on the right to counsel in other areas, being the only state that guarantees counsel for all domestic violence and custody matters. Now New York City can become a pioneer in its own right, and we in the Coalition sincerely hope that it does so.

**Tom Waters**  
**Policy Analyst**  
**Community Service Society**

I agree with Chief Judge Lippman and all the other speakers that the most important reason to provide a right to counsel for tenants facing eviction in housing court is the incredible harm done to tenants by evictions – for many low-income people it is just as bad as being locked up. But I am here to talk about the effect that evictions have on housing in New York as a system, and therefore the harm that it does, not to individuals, but to society as a whole.

In order to see these effects, we need to see housing in New York as a dynamic system, with the various stocks of housing – public and subsidized housing, rent-regulated housing, unregulated rentals, owner housing, and group quarters, and two kinds of flows. One kind of flow is the movement of apartments from one stock to another when their status changes – from subsidized to unsubsidized or from regulated to unregulated, or when housing is built or torn down. The other kind of flow is the flow of people from one apartment to another. Both kinds of flows are reshaping the stocks of housing all the time.

There are more than 3 million low-income people in New York City living below 200 percent of the poverty line. They are distributed widely over the types of housing like this:

- About 850,000 live in rent-regulated apartments without subsidy.
- About 750,000 live in public or subsidized housing, including those with Section 8 vouchers.
- About 650,000 live in unregulated, unsubsidized rentals.
- About 250,000 are owners.
- A couple hundred thousand more live in group quarters like jails, shelters, nursing homes, and group homes.

There are significant regulatory flows between these pools of housing. Probably somewhere between 10,000 and 20,000 regulated apartments become unregulated each year. And during the ten-year housing boom before

the crisis of 2008, 30,000 to 40,000 subsidized apartments left their subsidy programs.

But the flow of people is even larger. In 2010, about 120,000 low-income households, or 300,000 people, moved.

When a low-income family moves, if it's a family in public or subsidized housing, they will almost certainly face a loss of affordability, unless they are taking a Section 8 voucher with them or they are moving to a different subsidized apartment. But the apartment that they vacate will be affordable to the next tenant, except in the case of vouchers.

If the family is leaving a regulated or unregulated rental, they will also suffer a loss of affordability, because the cheapest apartment you can find is almost always the one you are in. Even if the family moves to a less expensive or less desirable neighborhood, they will probably pay a much higher rent, because apartments that are vacant and available are more expensive than already-occupied ones.

And the apartment that they leave behind will also become less affordable, because of the large rent increases that occur on vacancy in New York in both regulated and unregulated housing. In some neighborhoods today, the new tenant may have a much higher income and thus find the new apartment affordable. That's the gentrification scenario. But in many other neighborhoods, the new tenant will be not too different from the people who just moved out,



except that the new tenant will be paying not just 45 percent of income like the old tenant, but 55 percent or higher.

Likewise, in many neighborhoods, and not just in Manhattan, when people move out of a rent-stabilized apartment, the apartment is deregulated. In other places, the apartment remains subject to rent stabilization, just with a much higher rent. These are the key processes that are transforming the city's housing stock, and making it so much less affordable.

We have 28,000 evictions a year now in the narrow, legal sense, and most of those involve low-income tenants. But when regular people use the term eviction, they are also including all the times that the landlord says get lost and the tenants just go because they don't think they have the power to fight back. There must be at least as many of these evictions without a judge and a marshal as there are of the other kind.

Evictions could easily be accounting for half of all moves by low-income people, when you consider how strong the economic incentive to stay put is now. This means that evictions are a significant point of leverage for doing something about our housing system. By cutting down unnecessary evictions through a tenant's right to counsel, we can slow the process that's destroying affordability in the city as a whole, and I'd like to offer that as an additional reason to support a right to counsel.

# IMPACT ON THE CITY

**Maria Cortes**  
Make the Road New York

"There are rising rents and the issue of eviction is affecting particularly the Latino communities and other minority communities and this is something that we are facing in all of the neighborhoods in the state of New York."

**Matthew Desmond**  
Harvard University

"Eviction is commonplace in the city's African-American neighborhoods. If evictions weren't so common, poor families would not exhibit such high rates of residential instability, which often bring about other forms of instability in families, schools, communities, compromising the life chances of kids and adults."

"Providing stable housing by lowering evictions is a human capital investment, analogous to education or job training and one that would decrease child poverty and child homelessness and stabilize families, schools and neighborhoods. If we want to give poor kids a fighting chance to realize their full potential, we have to provide them with a stable place to live."

**Honorable Jonathan Lippman**  
Chief Judge for the State of New York

"We are making a lot of progress in the housing area. What could be more important than a roof over somebody's head? It is a fundamental necessity of life. Allowing people to fall off the cliff and lose their homes and become a burden to society because they cannot access legal services is counter-productive. We in the judiciary are proud of the grants that we have been able to get on the state level to help in this area."

**Dean Anthony Crowell**  
New York Law School

"This is an important subject and I think one of the things that we have to understand is that there is an incredible urgency to address housing justice issues especially with the acute rise in evictions and the persistent challenge of homelessness that we are faced with."

**Edwina Francis Martin**  
Network of Bar Leaders

"More than 3 million New York City residents have incomes lower than 200% of the federal poverty level yet fewer than 800 of the 75,000 lawyers in NYC are dedicated to providing legal services to the poor. As a result of this and lack of legal funding for civil legal services the Chief Judge's Task Force on Expanding Access to Civil Legal Services has consistently found that less than 20% of the legal needs of New Yorkers are being met."

**Joshua Goldfein**  
Legal Aid Society

"The last (mayoral) administration did not invest enough resources in eviction protection and cut off its own supports for families to move out of the shelter system. When you don't provide sufficient anti-eviction services and don't provide housing subsidies to shelter residents, then you will continue to watch the homelessness problem expand."

"If the city does not offer services to prevent people from having to come into the shelter system and doesn't help people move out of the shelter system, we will continue to see the shelter system grow and expand forever. This is what we have seen in the recent past, the continuous expansion of the number of homeless people as a direct result of short-sighted housing policy by the prior administration."

**Susanna Blankley**  
Community Action for Safe Apartments

"Since the mayor took office, he has built 23 new shelters to deal with a 13% increase in homelessness. We can't build our way out of this crisis."

**Shanequa Charles**  
Community Action for Safe Apartments

"The shelter reporting is not the accurate amount of homeless folks. Those are only the ones in the shelter. We are not talking about the families that are bunched up underneath the bridge, trying to find good pieces of cardboard, and children that are getting sick, and can't focus on school, and mommy can't work because she has to take care of the sick baby."

**John Pollock**  
National Center for a Civil Right to Counsel

"In San Francisco they completed a study that examined about 800 cases altogether. They found that full representation was more effective than limited or no representation. When they estimated how much this representation saved the city, it turned out to be about \$1 million."

**Glenn Lau-Kee**  
New York State Bar Association

"We're focusing in New York City here, but obviously in the NYS Bar Association we're focused also on the rest of the state. We'd like to see what happens here because obviously this is not an isolated problem. It is very acute in New York City but it's also a problem throughout New York State."

# ACCESSING JUSTICE

## Lewis Tesser

New York County Lawyers' Association

"Approximately 90% of tenants are unrepresented. This enormous imbalance correlates with higher eviction rates and higher homelessness rates. NYCLA has found that tenants who have counsel have been more successful in opposing eviction."

"As part of our research concerning the challenges facing litigants in Housing Court, NYCLA has studied the changing social and economic demographics of the city, high rates of homelessness, substantive legal issues affecting housing conditions, hold-overs, and non-payments. One of NYCLA's findings is the discrepancy between representation of landlords and that of tenants despite the work of the Legal Aid Society, non-profit organizations, and law school clinics."

## Alan Rothstein

New York City Bar Association

"According to the Chief's Justice Task Force on Civil Legal Services, nearly 2 million people walk into NY courts every year to handle their legal matters without lawyers. This problem is particularly acute in the city's Housing Court, where 90% of tenants have no lawyer and over 90% of landlords have counsel. The organized bar is quite aware of and concerned about the lack of counsel in Housing Court."

## Joshua Goldfein

Legal Aid Society

"Having more tenant lawyers benefits everyone, including the courts. Judges would much rather deal with lawyers than pro se litigants, and most other lawyers would as well, courts run more efficiently that way. At least 90% of the landlords are represented in housing court compared to less than 10% of the tenants. Therefore, judges spend most of their day talking to unrepresented tenants, without having the time to fully assure themselves that the tenant understands what is happening."

## Matthew Desmond

Harvard University

"Even after accounting for how much tenants owed their landlord and several other factors, the presence of kids in the household almost triples your odds of receiving an eviction judgment. Far from being a mitigating factor, children are an aggravating factor in eviction court."

## Edwina Francis Martin

Network of Bar Leaders

"We keep talking about being in recovery but where is it happening? The percentage of those living below poverty went from 18.4% in 2008 to 20% in 2012."

## Sateesh Nori

Legal Aid Society

"The landlord's attorney really wins either way whether there is an attorney for the tenant or not, but tenants have so much to lose if they do not have an attorney and it's really their lives that are at stake."

"How would the Right to Counsel change my practice, the practice of lawyers like me? We would be able to use our limited resources better. We would need to engage in less triage, less screening ideally, and we would be able to take on cases right away, eligible cases, viable cases where we could make a difference immediately. We would be able to take on more cases at strategically significant points in the case."

## Martha Davis

Northeastern University School of Law

"While our peers in Europe stand out in terms of their commitment to providing civil representation, Japan has also recently expanded its civil legal aid scheme and provides free representation and, on occasion, loans to those who cannot afford counsel but need legal assistance. In sum, this is really a case of negative exceptionalism by the United States."

## Andrew Scherer

Impact Center for Public Interest Law at NYLS

"The wealth gap has been rising in a very alarming way. Federal district courts have 1200 judges and magistrates to deal with their cases and the NYC Housing Court has 50 judges to deal with the same number of cases. Federal courts have a budget of \$2.6 billion and NYC Housing Court has a budget of about \$32 million. So the federal courts are spending almost 80 times as much per case as Housing Court and the Housing Court judges handle about 140 times as many cases as do the federal court judges."

## Susanna Blankley

Community Action for Safe Apartments

"A year and a half ago we released a report, called 'Tipping the Scales' and it was the first report in the city to come entirely from tenant experiences of Housing Court in the Bronx. More than 2,000 people go through that court every day. One of the main demands that came out of that report, is that the most important thing that we need to do to tip the scales of justice in the Housing Court system is to make it a right for folks to defend their homes."

"For the last few days, we have been chanting that black lives matter and that systemic racism has got to go. The reality is that right to counsel is a racial justice issue. The majority of people that get evicted from our system's courts are people of color. Right to counsel can stop making people homeless, it can stop making people poor."

**Glenn Lau-Kee**  
New York State Bar Association

"It is further resolved that in view of the NYS Bar Association's commitment to the goal of a civil right to counsel and legal matters affecting basic human needs, the NYS Bar Association urges the NY State Legislature to expand the civil right to counsel in New York by enacting legislation providing the following protections, and the first one is to provide a right to counsel for vulnerable low-income people who face eviction or foreclosure from their homes."

**Carmen Vega-Rivera**  
Community Action for Safe Apartments

"If it wasn't that I had legal representation, it doesn't matter your income, it doesn't matter your size, it does not matter your education, I would have been homeless."

**Debra Raskin**  
New York City Bar Association

"One of the other areas the NYC Bar Association works on is pro bono representation, that is, having lawyers represent individuals without payment. We strongly support that, although, it is very clear from our work over many years in pro bono representation, that is far from sufficient for a crisis of the magnitude of the housing shortage here and the problems in evictions and Housing Court."

**Maria Cortes**  
Make the Road New York

"We have had a lot of experiences with evictions and what we need in the Housing Court are more interpreters and lawyers. There aren't enough interpreters and when we ask for one, they treat us very rudely. Another problem is that the interpreters speak too fast or they do not interpret appropriately."

**David Udell**  
National Center for Access to Justice

"New models ask our judges to be proactive and engaged in order to protect the tenant who does not have legal representation. Judge Lippman and Judge Fisher are to be commended for trying everything possible to make the system work better, given that so few people have lawyers. In fact, the courts in New York and in other states are also trying to simplify the laws and to simplify procedures. Courts are also committing more resources to having interpreters and translators. But, none of these efforts should be equated with the importance of having a lawyer."

**Bar Leaders Discussing Right to Counsel**  
Edwina Francis Martin, Lewis Tesser, Glenn Lau-Kee, Debra Raskin, Alan Rothstein



## Honorable Sabrina Kraus

New York City Housing Court

**People sometimes forget that when the Housing part system was created in the 1970s the original purpose was to provide tenants with a forum to prosecute requests for repairs against landlords. Although that is what housing court was originally started for, that now makes up a very small percentage of the cases. Most of our cases are tenants facing evictions.**

The biggest challenge for judges in housing court is to walk the line between being a neutral arbitrator in an adversarial system premised on the fact that both sides will have counsel.

We are supposed to adjudicate what the counsel are arguing in a system where in reality we have one side with no counsel; and now we have been asked to change the traditional model of a judge and to take on the responsibility of "leveling the playing field" and making justice accessible to pro se litigants. That is a huge challenge.

In his 2012 op ed article, Matthew Desmond describes an eviction room in Cambridge, Massachusetts and he states, "It's easy to tell who is going to win in eviction court. One side of the room sits tenants, men in work uniforms, mothers with children, wearing second-hand coats, confused and crowded together on hard benches. The other side, often in a set aside space, are not landlords but lawyers, dark suits doing crossword puzzles, joking with the bailiff as they casually wait for their cases to be called." While he is describing a court room in Cambridge, Massachusetts, that description could easily be applicable to court rooms in NYC.

Although I have the role of a judge now, I have had the role of a litigant. I have been in the situation where I walked into a court room where the judge is going to make decisions that are essential to me about my family, and I was terrified. I have a law degree, the resources to have hired competent counsel, and a good education. So when I put myself in the shoes of the people standing in

front of me that don't have those advantages, I can begin to imagine the kind of intimidation someone feels when they are in court without a lawyer.

We've been under a huge amount of pressure both from OCA and various sources to step off the traditional role of the judge and to do things that will help pro se litigants have access to justice. In 1997 OCA issued an advisory notice that was reissued in 2007. It tells us step by step what we should do in every case that is settled by an agreement where one party is not represented by counsel. There are nine steps.

The administration is telling the judges it is our obligation to figure out what their claims and defenses are and make sure that at least these issues have been raised.

And this is considered to be a minimum of what a judge has to do before approving a stipulation on one of a 100 cases that may be on that judge's docket for the day. In 2009 the state legislature took it further and they enacted RPAPL746 which statutorily requires judges to allocate stipulations for unrepresented parties. There is a statutory mandate to judges, again, to step off the traditional role and to take on the role that is more generally associated with an advocate. That is a very tough thing for a judge to do and still be a judge.

One of the challenges I face with a pro se litigant is first getting the litigant to deal with all of this. A lot of times the litigant's pressing concern is to get out of court as quickly as possible. Sometimes I receive resistance when I insist



that the litigant read the agreement before I approve it.

For the court, if a majority of the litigants had counsel, the court could stop trying to be a neutral arbitrator and also insure that the rights of the litigants are being heard and leave the advocacy to an advocate, which is the way our system was intended to run, and the burden would be significantly less on the courts.

The drain on court resources and trying to meet the need of the pro se litigants is extensive and would be greatly lessened if there were counsel in these cases.

Another problem I often get: if you get the tenant to actually go through the allocution and understand what the options are, then the tenant looks at you and says "Judge what should I do?" "Should I take the stipulation?" "Should I go to trial?" I can't answer that question. The court is not meant to meet those purposes, and in trying to meet them in a less than ideal world that we are dealing with now, it presents a myriad of difficulties that I think would be relieved if everyone had a right to counsel.

# THE TENANT EXPERIENCE

**Commissioner Vicki Been**  
New York City Department of Housing  
Preservation and Development

"Home represents stability, it provides a base from which we all learn to navigate and harness the opportunities that the neighborhoods offer us. Home is the hub of our social network, it provides the refuge that we need to relax, raise our kids, form relationships, enjoy our hobbies, to do all of the things that allow us to build and shape the lives that we each want to live. Homes make the difference between health and safety and security on the one hand or fear and tension and stress and danger on the other. Homes are about all of those critical issues of fairness, decency, and human rights."

**Shanequa Charles**  
Community Action for Safe Apartments

"There is nothing that can be said that can clearly demonstrate the emotional impact on a family when you are facing losing your home. When the marshal is at your door, then you have about three minutes to grab those kids and get something that is very important to you and head out the door, because your landlord has evicted you. Your dream is over. Grab your stuff and go. By the way, the marshal is not a nice guy. By the way, the marshal stands there and treats you as if you are a criminal until you get your things and you get out of that apartment. We are now faced with this bad dream every single day. At least 30,000 times in 2013, that happened to someone. It doesn't have to."

**Debra Raskin**  
New York City Bar Association

"We focus, in particular, on eviction cases because of the high consequences of loss of a home, and family disruption and homelessness that follow from that. As you've heard, over 90% of the individuals who appear in housing court as tenants do so without a lawyer, and it's inexcusable."

**Carmen Vega-Rivera**  
Community Action for Safe Apartments

"I want heat and hot water every day, not just when he (the landlord) feels like it. I want a working elevator, because I pay for it. Not that I have to miss appointments because I can't get up and down the steps. I am one in less than 10% that has legal representation."

"We don't fit into a box of: we look alike, we talk alike, we dance alike, we eat alike. We are quite diverse. We have something in common, the process of being evicted and the trauma that it causes someone and their family."

**Monica Ross**  
New York Legal Assistance Group

"I am part of a growing trend of military women coming back from combat that are facing homelessness. My experience in Housing Court was frightening at first because I did not have legal representation. I met with the landlord's attorney and the first thing he told me was pay this money or we are going to evict you. The first thing on an attorney's mind is 'We want you out so we can get somebody else in.'"

**Joshua Goldfein**  
Legal Aid Society

"When a tenant sees us (tenant lawyers) in court, they know they have rights and that the others lawyers in the building do not represent them."

**Mary Zulack**  
Columbia Law School

"Many people describe the Housing Court as somewhat like a Halloween Funhouse. The Housing Court Answers table sort of turns on the light, shows you what's happening, they give you some help, and make it a very different and much brighter place."

**Maria Cortes**  
Make the Road New York

"In my particular case, what we are asking for is respect and dignity. We want to live like everyone else in the world. We have a right to have housing, to be able to participate in the society as citizens. The question is, do they just want all people of color to pack up and get out of the city?"



**How Tenants Experience Housing Court**  
Maria Cortes, Shanequa Charles

## Matthew Desmond

Professor  
Harvard University

*It had been a difficult year ever since that snowball. Joey and his cousin had been cutting up tossing snowballs at passing cars. Joey packed a tight one and let it fly and a car jerked to a stop and this man jumped out. The boys ran inside and locked the door and the man kicked it in, but he left before anything else happened. When the landlord found out, he evicted Joey's mother Arlene and her two boys for damaging his property. Arlene cursed at Joey because she couldn't curse at the landlord.*

Evictions have become common place in poor neighborhoods due to rising cost, falling income and the failure of federal policy to bridge the gap. In our survey of Milwaukee renters we counted formal evictions, informal evictions, landlord foreclosures, and building condemnations. We found that about one out of eight renters in the city of Milwaukee were evicted in the past two years. Once we accounted for forced moves we found that poor renters do not exhibit higher rates of mobility than anybody else.

If eviction wasn't so common, poor families would not exhibit such high rates of residential instability, which often bring about other forms of instability in families, schools, communities, compromising the life chances of kids and adults.

Arlene took her two sons to a Salvation Army shelter which everyone in Milwaukee calls a "lodge," so you can tell your kids we are staying in the "lodge" tonight, like it's a hotel. From there Arlene looked for another house. She found one on 19th Street. It often didn't have any water and Joey would have to bucket out what was in the toilet. "It was quiet," Arlene remembered. "It was my favorite place."

Renters whose previous move was an eviction were almost 25% more likely to exhibit long term housing problems than renters that didn't experience a recent forced move.

The city found Arlene's favorite place unfit for human habitation and it was condemned. She was again on the hunt for housing. She told Joey, "we take whatever we can get." A drab apartment complex on Atkins Avenue accepted her application. Arlene soon learned that the whole block was totally drug soaked. She feared for her boys, especially Joey who was hungry to prove himself just like he did with that snowball. Why she moved into a really bad neighborhood was because of how she

moved there.

**Bottom line is families being forced out of their homes move into worse neighborhoods than they lived in before.**

*Arlene moved away from the crack alleys of Atkinson Avenue as fast as she could. She found a two bedroom on 13th Street. The rent in one of the worse neighborhoods in one of America's poorest cities would take 88% of Arlene's welfare check. Not long after moving in Arlene's sister died. She helped pay for the funeral costs. She didn't have the money but neither did anyone else. Arlene would have been ashamed of herself if she hadn't pitched in. In eviction court, Arlene thought of the broken window and the sporadic hot water, the grimy carpet and she told the commissioner "I would say something, but I'm not going to go there." That was her defense. But at least she showed up, unlike 88% of Milwaukee's tenants. Arlene had to be out. After her eviction Arlene took her two boys to a domestic violence shelter. She lied about being abused so she could get a bed. From there she began again looking for another apartment. Landlords weren't calling back and part of the reason, besides her poverty, had to do with her eviction record, which was easily accessible and free on-line thanks to Wisconsin's open record laws. Finally the ninetieth landlord that Arlene called said yes. She settled in and enrolled her boys in a new school. Joey and Jafaris had missed long stretches of school. At his new school, Joey began acting out. After a teacher yelled at him, he kicked her and ran home. The school called the police and the police followed him to the apartment. When the landlord heard about this he told Arlene and the kids they had to go.*

**Kids can prolong the time you are homeless after the eviction, owing to family discrimination. And they are sometimes the reason for your eviction. We found that, even after accounting for how much tenants owed their landlord**

and several other factors, the presence of kids in the household almost triples your odds of receiving an eviction judgment. Far from being a mitigating factor, children are aggravating in eviction court.

*Arlene was beginning to unravel. Arlene said "it's like I have a curse on me. It won't stop for nothing. Sometimes I find myself trembling. I'm tired but I can't sleep. I'm fitting to have a nervous breakdown."*

**Eviction doesn't spare your mental health. We found that evicted mothers report 20% higher rates of depression compared to observationally identical mothers who avoided eviction, even after accounting for homelessness and other shocks to the system. Eviction is a cause and not just a condition of poverty. It has an independent effect on your residential instability as well as your housing and neighborhood quality. Some of the effect, as with depression, is stubbornly resilient, lasting years after the displacement. Providing stable housing by lowering evictions is a human capital investment, analogous to education or job training and one that would decrease child poverty and child homelessness and stabilize families, schools and neighborhoods. If we want to give poor kids a fighting chance to realize their full potential, we have to provide them with a stable place to live. Without stable shelter, everything else falls apart. And for kids like Jafaris, it falls apart in an age where they are growing their brains that they will need for the rest of their lives. The average age of an evicted child in Milwaukee is seven.**

*Joey felt bad that kicking the teacher caused his family to be evicted again. They stayed for a while with friends and family members, and then Arlene found another run-down apartment on another dangerous block. It was not long before she and her boys were robbed at gun point in her apartment, which caused them to flee again to another shelter. Arlene said "my soul is messed up. I wish my life were different. I wish I could be an old lady, sit back and look at my kids and they would be grown and they would become something and we could all be together, laughing and looking back at this and laughing at it."*

# THE EXPERTS

## Cathy Albisa Co-Founder National Economic and Social Rights Initiative

Cathy Albisa is a constitutional and human rights lawyer with a background on the right to health. Albisa also has significant experience working in partnership with community organizers in the use of human rights standards to strengthen advocacy in the United States. She co-founded NESRI along with Sharda Sekaran and Liz Sullivan in order to build legitimacy for human rights in general, and economic and social rights in particular. She is committed to a community centered and participatory human rights approach that is locally anchored, but universal and global in its vision. Albisa clerked for the Honorable Mitchell Cohen in the District of New Jersey. She received a BA from the University of Miami and is a graduate of Columbia Law School.

## Steven Banks Commissioner New York City Human Resources Administration

Commissioner Steven Banks was appointed by Mayor de Blasio in February 2014, he serves as chief executive of the largest local social services agency in the country, which serves over 3 million New Yorkers, with 15,000 employees and an operating budget of over \$9 billion.

Banks has dedicated his career to improving the lives of low-income New Yorkers and is recognized as one of New York City's leading public interest lawyers. From 2004 until his appointment, Banks was the Attorney-in-Chief of the Legal Aid Society. He began his career at Legal Aid in 1981 as a Staff Attorney in the Staten Island Neighborhood Office. He has also previously served as counsel to the Coalition for the Homeless—and is credited with helping reach a landmark settlement with the City in 2008 over its treatment of homeless children and adults, which resulted in the establishment of a permanent enforceable right to shelter for homeless families in New York City. Banks graduated from the New York University School of Law in 1981, and from Brown University in 1978.

## Susanna Blankley Director Community Action for Safe Apartments

Susanna Blankley is the Director of Housing Organizing of Community Action for Safe Apartments (CASA), a project of New Settlement Apartments, in the Southwest Bronx. CASA is made up of more than 1,300 community members who work together to improve the living conditions in the Bronx and maintain affordable housing through collective action. Susanna has close to ten years of labor and tenant organizing experience. Before organizing, Susanna worked to advance Women's Rights in Ecuador, New York City and Kenya. Blankley received her undergraduate degree from Columbia University and her Masters in Intercultural Service, Leadership and Management from the SIT Graduate Institute.

## Vicki Been Commissioner New York City Department of Housing Preservation and Development

Commissioner Vicki Been is responsible for leading the nation's largest municipal housing agency and is charged with creating and implementing Mayor Bill de Blasio's Five-Borough, Ten-Year Plan, a bold initiative to create or preserve 200,000 affordable homes and apartments over 10 years. Prior to her appointment as HPD Commissioner, Been was Director for NYU's Furman Center for Real Estate and Urban Policy, a nationally renowned academic research center devoted to the public policy aspects of land use, real estate, and housing development. She also served as the Boxer Family Professor of Law at NYU School of Law and Affiliated Professor of Public Policy of the NYU Wagner Graduate School of Public Service.

She is also the Co-author of a widely used land use casebook, *Land Use Controls*. Been is a 1983 graduate of New York University School of Law, where she was a Root-Tilden Scholar. She clerked for Judge Edward Weinfeld of the Southern District of New York and Justice Harry Blackmun of the Supreme Court of the United States.

## Shanequa Charles Tenant Leader Community Action for Safe Apartments

Shanequa Charles is a mother, Community Board 7 member, CASA Leadership team member, Executive Director of Miss Abbie's Kids, a youth development non profit serving the Northeast Bronx and community leader whose own housing crisis led her to become a vocal advocate for tenants housing rights. She earned an undergraduate degree from SUNY Potsdam. Her dedication to underserved populations and the African American community continue to be paramount in this movement towards justice and Housing equality.

## Maria Cortes Client Make the Road New York

Maria Cortes migrated to the United States from Puerto Rico in 1987. Maria has called the borough of Brooklyn home—living in the same apartment in Bedford Stuyvesant for the last 22 years. As a wife, mother and grandmother, Cortes understands the value of community and has been working hard as a tenant leader of Make the Road New York to make sure that her community doesn't get torn apart. One effort that Cortes has played a critical role in is the improvement of Brooklyn Housing Court.

## Anthony Crowell Dean New York Law School

Anthony W. Crowell is New York Law School's Dean and President. Since joining NYLS full-time in 2012, he has worked closely with the Board, faculty and administration to reintroduce NYLS as "New York's law school" and implement a bold Strategic Plan, the benefits of which already have yielded stronger student outcomes: a doubling of clinical and experiential programs; the development of the nation's first two-year JD honors program; and significant enhancements to career planning and placement and student and alumni engagement. *Crain's New York Business* recognized Dean Crowell as one of its "People to Watch in Higher Education." He has taught courses in State and Local Government Law at NYLS for twelve years. Prior to becoming Dean, he held the position of Counselor to New York City Mayor Michael R Bloomberg, serving the Administration for more than a decade. Dean Crowell previously served as Special Counsel to the Mayor; as Assistant Corporation Counsel in the New York City Law Department's Tax & Condemnation and Legal Counsel Divisions; and as Director of the City's World Trade Center Death Certificate Program and Counsel at the city's Family Assistance Center, where he aided families of victims of the 9/11 attacks. Dean Crowell worked in Washington, DC at the International City/County Management Association. He is a member of the New York City Conflicts of Interest Board, and previously chaired the Board of Trustees of the Brooklyn Public Library. He also serves on the Board of Directors of the Citizens Union Foundation and the Executive Committee of the Brooklyn Chamber of Commerce.

## Martha Davis Professor Northeastern University School of Law

Martha Davis teaches Constitutional Law and Professional Responsibility at Northeastern University School of Law, where she also serves as a faculty director for the Program on Human Rights and the Global Economy and the NulawLab. Davis has written widely on social justice issues, often employing a human rights lens. She is co-author of the first law school textbook focused on domestic human rights: *Human Rights Advocacy in the United States* (West 2014), and she co-edited *Bringing Human Rights Home*. Davis's book, *Brutal Need: Lawyers and the Welfare Rights Movement*, received the Reginald Heber Smith Award for distinguished scholarship on the subject of equal access to justice, and was also honored by the American Bar Association in its annual Silver Gavel competition. Davis's articles on the right to civil counsel have appeared in the Yale Law Journal, the Syracuse Law Review and the Columbia Human Rights Law Journal. Prior to joining the Northeastern law faculty, Davis was vice president and legal director for the NOW Legal Defense and Education Fund.

## Matthew Desmond Professor Harvard University

Matthew Desmond is an Assistant Professor of Sociology and Social Studies at Harvard University. He was previously a Junior Fellow in the Harvard Society of Fellows. Desmond is the author of numerous books and articles. Most recently, he has published on eviction and the low-income rental market, the American affordable housing crisis, survival strategies among the urban poor, and the consequences of new crime control policies on inner-city women. He is the principal investigator of the Milwaukee Area Renters Study, a MacArthur Foundation-funded original survey of tenants in Milwaukee's low-income private housing sector, and editor of *The Russell Sage Journal of the Social Sciences Special Issue on Severe Deprivation in America*. Desmond is currently completing his fourth book: *Evicted: Poverty, Exploitation, and Survival in the American City*, forthcoming by Crown.

## Randy Dillard Tenant Leader Community Action for Safe Apartments

Randy Dillard is a single parent of five children and a longtime Bronx resident. He is a member of New Day Church. He is a leader of Community Action For Safe Apartments and a member of the Bronx Defenders. He also works with Women's Empowerment Self Defense Academy.

**Kate Donald**  
**Executive Director**  
**Center for Economic and Social Rights**

Kate Donald is Director of the Human Rights in Development Program at the Center for Economic and Social Rights. Previously, Donald worked as Adviser to the UN Special Rapporteur on Extreme Poverty and Human Rights (Magdalena Sepúlveda), examining the impact of public policies and development policies on the rights of people living in poverty. In particular, she worked on issues including unpaid care work, social protection policies, fiscal policies and access to justice. Donald has also held positions at the Office of the High Commissioner for Human Rights and the International Council on Human Rights Policy, and has been a consultant for the United Nations and the Gender & Development Network. Donald holds a Masters in Human Rights from the London School of Economics and a Bachelors in History from Oxford University.

**Joshua Goldfein**  
**Homeless Rights Project**  
**Legal Aid Society**

Joshua Goldfein is a Senior Staff Attorney at the Legal Aid Society. He started at Legal Aid in 1993 in the housing unit at the Harlem Neighborhood Office and since 1998 has worked in the Homeless Rights Project.

**Honorable Jonathan Lippman**  
**Chief Judge**  
**State of New York**

Honorable Jonathan Lippman is the Chief Judge of the State and Chief Judge of the Court of Appeals. In that capacity, he presides over New York's highest court while heading a statewide court system with a \$2.7 billion budget, 3,600 judges, and 16,000 non-judicial employees. Chief Judge Lippman's career in the court system spans four decades and as the longest tenured Chief Administrative Judge in state history, he played a central role in many far-reaching reforms of New York's Judiciary and legal profession.

Chief Judge Lippman has authored a number of major decisions addressing constitutional, statutory and common law issues. As the State's Chief Judge he has championed equal access to justice issues and taken an active leadership role in identifying permanent funding streams for civil legal services. Judge Lippman is a recipient of the William H. Rehnquist Award for Judicial Excellence, presented each year to a state court judge who exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics. Judge Lippman was selected for his "unparalleled ability to promote and achieve reform in the state courts. His leadership in the New York courts has contributed to numerous improvements in that state's justice system and has served as an example for courts across the country."

**Patrick Markee**  
**Deputy Executive Director**  
**Coalition for the Homeless**

Patrick Markee is the Deputy Executive Director for Advocacy at Coalition for the Homeless, where he has worked since 1995. He has authored numerous research studies and briefing papers on affordable housing and homeless policies in New York City, including *Housing a Growing City: New York's Bust in Boom Times*; *Legacy of Neglect: The Impact of Welfare Reform on New York's Homeless*; and the Coalition's annual *State of the Homeless* reports. In addition to studies for the Coalition, he has written articles and reviews for *The Nation* and *The New York Times Book Review*. He is also a member of the board of directors of the National Coalition for the Homeless.

**Risa Kaufman**  
**Executive Director**  
**the Human Rights Institute**  
**Columbia Law School**

Risa Kaufman is the executive director of the Human Rights Institute at Columbia Law School and a Lecturer-in-Law. At the Human Rights Institute, she develops and advances international human rights norms and strategies in the United States through research, advocacy, network building, and training. Her advocacy and research focus on state and local implementation of human rights, access to justice, and economic, social, and cultural rights. In addition, Kaufman teaches a seminar on domestic human rights advocacy and oversees the overall functioning of the Institute. She is the co-author of a new law school textbook, *Human Rights Advocacy in the United States* (West 2014).

**Honorable Sabrina B Kraus**  
**Judge**  
**New York County Housing Court**

Honorable Sabrina Kraus has been a Housing Court Judge since 2006. Prior to her appointment, she was a partner in Borah, Goldstein, Altschuler, Nahins & Goidel, a landlord/tenant firm. Kraus served as president of the Housing Court Judges Association in 2010, and is a member of the New York City Bar Association, Jewish Lawyer's Guild, National Association of Women Judges, New York Women's Bar Association, and New York County Lawyer's Association. She received her undergraduate degree from Colgate University in 1988, with a major in International Relations and French Literature. She earned her law degree from the Benjamin N Cardozo School of Law in 1991.

**Glenn Lau-Kee**  
**President**  
**New York State Bar Association**

Glenn Lau-Kee is President of the New York State Bar Association, the first Asian-American to assume the presidency. He is a partner of Kee & Lau-Kee. A 15 year member of the State Bar Association, Lau-Kee most recently chaired the House of Delegates and co-chaired the President's Committee on Access to Justice. He was a member-at-large of the Executive Committee and co-chair of the Membership Committee. He received the Commercial and Federal Litigation Section's George Bundy Smith Pioneer Award in 2010. Lau-Kee was a member of the Task Force on the State of Our Courthouses.

He is a vice-chair of the board of the Greater NYC YMCA and a board member of the Fund for Modern Courts, The New York Bar Foundation and US-Asia Institute. He served as president of the Asian American Bar Association of New York and was appointed by former Chief Judge Judith S Kaye to serve on the Commission to Examine Solo and Small Firm Practice, and the Committee to Promote Public Trust and Confidence in the Legal System. Lau-Kee graduated from Yale College and Boston University School of Law.

**Jenny Laurie**  
**Executive Director**  
**Housing Court Answers**

Jenny Laurie is the Executive Director of Housing Court Answers where she has worked since 2008. She works with unrepresented people in Housing Court through the organization's information tables and telephone hotline. She directs the organization's advocacy campaigns which are focused on ensuring justice and fairness for the many thousands of low income people without lawyers in Housing Court. Laurie worked at Met Council on Housing on strengthening rights and protections for NYC tenants.

**Edwina Frances Martin**  
**Board Member**  
**Network of Bar Leaders**

Edwina Frances Martin is a public interest lawyer specializing in Government Relations, Non-Profit Management, and Strategic Communications. In 2012 she was appointed the Counsel/Legislative and Budget Director for NYC Councilwoman Debi Rose. Previously she was the Director of Communications and Government Relations for Legal Services NYC. She began her career serving as a law clerk to Judge Lawrence W Pierce, United States Court of Appeals for the Second Circuit, and was a Litigation Associate at Van Lierop, Burns & Bassett LLP and Shearman & Sterling LLP.

Martin's current bar association work includes the NYS Bar Association; the Network of Bar Leaders, and the Staten Island Women's Bar Association. She is also a member of the NYC Bar, Staten Island Trial Lawyers, and Richmond County Bar. Martin is also active in several civic organizations including the New York Bar Foundation, the American Association of University Women-NYS, and the SI Alumnae Chapter of Delta Sigma Theta Sorority. Martin graduated NYU School of Law, and holds a BA in Art History from Williams College.

**Sateesh Nori**  
**Attorney-in-Charge**  
**Legal Aid Society, Queens**

Sateesh Nori is the Attorney-in-Charge of the Queens Neighborhood Office of the Legal Aid Society. Prior to that, he was the Director of Housing Litigation at Bedford-Stuyvesant Community Legal Services. He has represented low-income tenants and tenants' associations, lead trainings for members of the community and members of the bar. He was Chair of the City Bar's Housing Court Committee, is a board member of Housing Court Answers and has taught at Cardozo School of Law. Nori started his career as a housing staff attorney in Legal Aid's Brooklyn Neighborhood Office.

**Carlos Perez-Hall**  
**Attorney**  
**Borah, Goldstein, Altschuler, Nahins & Goidel, PC**

Carlos Perez-Hall is a partner in the Landlord/Tenant division of Borah, Goldstein, Altschuler, Nahins&Goidel, PC. He appears regularly in Housing Court in the Bronx, Manhattan, Brooklyn and Harlem. He represents a range of landlords, large and small. Perez-Hall is the President of the Puerto Rican Bar Association and has served as the Chair of the Judiciary Committee since 2011. He also serves as a member of the Housing Court Advisory Council of the Civil Court of New York. Perez-Hall is a member of the New York State Conference of Bar Leaders section of the New York State Bar Association, the Bronx Bar Association, and the New York Trial Lawyers Association.

**John Pollock**  
**Coordinator**  
**National Coalition for a Civil Right to Counsel**

John Pollock is a Staff Attorney for the Public Justice Center and the Coordinator of the National Coalition for the Civil Right to Counsel. He focuses entirely on working to establish the right to counsel for low-income individuals in civil cases involving fundamental rights such as child custody, housing, safety, and public benefits. Previously, Pollock was the Enforcement Director for the Central Alabama Fair Housing Center and a Law Fellow for the Southern Poverty Law Center. He graduated from Northeastern University School of Law in 2005.

**Debra Raskin**  
**President**  
**New York City Bar Association**

Debra L Raskin is president of the NYC Bar Association and since 1988 has been a partner at Vladcek, Waldman, Elias & Engelhard PC. Raskin graduated from Radcliffe College magna cum laude in 1973 and received her law degree from Yale in 1977. She worked at the Legal Assistance Foundation of Chicago from 1977 to 1981, serving in 1981 as Supervisor of Employment Litigation for that organization. She served as law clerk to Hon Lee P Gagliardi of the United States District Court, Southern District of New York. She served as an Assistant Attorney General of the State of New York in the Civil Rights Bureau. She joined the Vladcek firm in 1986. Raskin is a Fellow of the American College of Trial Lawyers, has taught at Columbia and Fordham Law Schools and has lectured and written for the New York State Bar Association and the Practicing Law Institute.

**Monica Ross**  
**Client**  
**New York Legal Assistance Group**

Monica Ross is a working single mother who served in the United States Navy from 2001 to 2005, only to find herself struggling to avoid homelessness. Unfortunately, her struggle is not unique. The threat of homelessness among vets is a serious problem nationwide, a situation that is even worse for low-income veterans returning to New York City due to the chronic and growing shortage of affordable housing. Women veterans, who face unique barriers when returning to civilian life, are even more likely to become homeless—a problem that is expected to grow as more women join the military.

**Alan Rothstein**  
**General Counsel**  
**New York City Bar Association**

Alan Rothstein serves as General Counsel to the NYC Bar Association, and as General Counsel of the City Bar Fund. Prior to his 20 years with the Association, Rothstein was the Associate Director of Citizens Union. Rothstein started his legal career at Weil, Gotshal & Manges.

He earned his BA from City College and an MA in Economics from Brown University before earning his JD from NYU. Prior to his legal career, Rothstein worked as an economist in the environmental consulting field and for the NYC Economic Development Administration. He serves on the boards of Volunteers of Legal Service and Citizens Union, where he chairs its Committee on State Affairs and serves on the Executive Committee. He also serves on the New York State Bar Association House of Delegates and the New York Chief Judge's Emeritus Advisory Council.

**Andrew Scherer**  
**Policy Director**  
**Impact Center for Public Interest Law**  
**New York Law School**

Andrew Scherer is the Policy Director of the Impact Center for Public Interest Law at NYLS and a Distinguished Adjunct Professor at NYLS. In addition, he is the principal of Andrew Scherer Consulting and an Adjunct Professor at the Columbia University Graduate School of Architecture, Planning and Preservation. He is the author of the *Residential Landlord-Tenant Law in New York* (Thomson Reuters) and of numerous other publications. In 2010, Scherer stepped down after nine years as Executive Director of Legal Services NYC, where he had worked since 1978. Scherer has also taught at CUNY Law School, NYU Law School, Yangon University in Myanmar, and Bennington College. He has lectured in the US, Latin America, Africa and Asia. He received his BA from the University of Pennsylvania and his JD from NYU Law School.

**Lewis Tesser**  
**President**  
**New York County Lawyers' Association**

Lewis Tesser is a Senior Partner in the New York law firm of Tesser, Ryan & Rochman, LLP. He is President of the New York County Lawyers' Association and former Director of its Ethics Institute. Tesser formerly chaired the General Practice Section of the New York State Bar Association.

Prior to private practice, Tesser was an Assistant United States Attorney in the Eastern District of New York and also served as a Judge Advocate in the United States Army where he prosecuted and defended criminal cases and was the chief legal advisor to the Commanding General of the US Army War College. He also has served as an Arbitrator for the American Arbitration Association and, NYC Civil Court, a Judge for the NYC Environmental Control Board and lectured at various bar associations and law schools.

Tesser graduated with honors from the National Law Center, George Washington University, received an MBA from the Wharton Business School, University of Pennsylvania and graduated from the Harvard Law School. He is a past President of Congregation Sons of Israel, Nyack, NY.

**David Udell**  
**Executive Director**  
**National Center for Access to Justice**

David S Udell is the Executive Director of the National Center for Access to Justice and a Visiting Professor from Practice at Cardozo Law School. He has held leadership roles in the national civil right to counsel movement and the national indigent defense reform movement, and also coordinated national work to strengthen the nation's Legal Services Corporation. He served as founding director of the Justice Program of the Brennan Center for Justice, a Senior Attorney at Legal Services for the Elderly and as a Managing Attorney at MFY Legal Services. He is a member of the New York Court System's Committee on Non-lawyers and the Justice Gap, a member of the Advisory Board to the Justice Center of the New York County Lawyers' Association, a former member of the NYC Bar Association's Committee on Professional Responsibility, and a former member of the NYC Bar Association's Committee on Pro Bono and Legal Services. He co-teaches a law school clinic – The Justice Gap: Strategies for Securing the Delivery of Equal Justice in American Courts, at Cardozo Law School.

**Carmen Vega-Rivera**  
**Tenant Leader**  
**Community Action for Safe Apartments**

Carmen Vega-Rivera is the Founder & CEO of Atabey Collaborative. She was Director of the NYC Chapter of Say Yes to Education, at Teachers College. Vega-Rivera was Executive Director of East Harlem Tutorial Program and Associate Director of the Bronx Museum of the Arts. She currently serves as a member of the Hostos Community College Foundation Board and is a CASA Leader. She resides in the Bronx with her family. She has been in Bronx Housing Court many, many times.

**Tom Waters**  
**Housing Policy Analyst**  
**Community Service Society**

Tom Waters has been a Housing Policy Analyst at the Community Service Society since 2005. His research focuses on the dwindling stock of subsidized and regulated housing, the effects of increased housing budget pressures, neighborhood change, and housing conditions affecting the city's immigrant communities. Prior to joining CSS, he was a journalist, a community organizer in Knoxville, Tennessee, and an organizer, fundraiser, and interim director at New York State Tenants & Neighbors. He has a MA in political science and is working on a doctoral dissertation on housing, neighborhoods, and organizations at the CUNY Graduate Center.

**Mary Zulack**  
**Professor**  
**Columbia Law School**

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**How Tenants Experience Housing Court**  
**Monica Ross, Maria Cortes, Shanequa Charles, and Randy Dillard**

# RIGHT TO COUNSEL NYC COALITION



The Right to Counsel NYC Coalition is made up of tenant organizing groups, tenant advocates, law schools and legal services organizations. We are working together to ensure that our city's housing courts are a place of fairness, justice and equity. We do not support forced displacements that can and should be prevented and we believe that safe and affordable housing is central to our city's future. We are working on establishing a right for New York residents to be represented by licensed, qualified and experienced attorneys when they go to Housing Court to defend their rights.

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New Settlement's Community Action for Safe Apartments  
 Housing Court Answers  
 The Community Development Project at The Urban Justice Center  
 Pratt Area Community Council  
 New York Legal Assistance Group  
 Legal Services—NYC  
 The Legal Aid Society  
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 South Brooklyn Legal Services  
 Brooklyn Legal Services Corporation A  
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 CAMBA Legal Services  
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 New York Immigration Coalition

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# HOUSING PRESERVATION - MEMO: CITYWIDE ANTI-HARASSMENT LEGISLATION BASED ON THE SPECIAL CLINTON DISTRICT

Source: Urban Justice Center – Community Development Project



COMMUNITY DEVELOPMENT PROJECT

## MEMORANDUM

From: The Urban Justice Center Community Development Project  
 Date: April 27, 2015  
 Re: Citywide Anti-Harassment Legislation Based on the Special Clinton District

This memo explains the details of the anti-harassment mechanism implemented in the Special Clinton District in Manhattan, exploring both the strengths of the Special Clinton District model, and suggestions for how the specific mechanisms of the current Special Clinton District could be improved.

The memo also suggests that key elements of the Special Clinton District model could be legislatively extended city-wide, explains the City Council's authority to pass such legislation, and explores potential legal challenges to such legislation. The coalition of community groups supporting this approach believes that any city-wide policy must be low-friction in the majority of buildings where there is no indication of harassment, thereby avoiding the creation of additional barriers for the majority landlords within the Department of Buildings permit process. But, for buildings where there is an indication that harassment is being deployed by the landlord in order to gain the financial benefit of vacant apartments, the legislation should employ the strong and proactive disincentives to harassment of a Special Clinton District-like mechanism.

Ultimately, we believe that citywide anti-harassment legislation would provide a strong and vital tool for protecting the interests of low-income tenants throughout the City, and we feel that such legislation would withstand legal challenges.

### I. The Special Clinton District

The Special Clinton District is a special district between 41<sup>st</sup> Street and 59th Street west of 8th Avenue in Manhattan, an area commonly known as Hell's Kitchen. The District "has a long history as a working class community, and as the gateway community for newly arrived immigrant groups."<sup>1</sup> The District "consists, to a large extent, of smaller residential buildings."<sup>2</sup>

Adopted in 1974, the Special Clinton District (Zoning Resolution § 96-00 et. Seq.) was created to maintain a broad mix of incomes and ensure that the community was not adversely affected by new development.<sup>3</sup> The District created a special anti-harassment provision that requires owners

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<sup>1</sup> Lee v. Chin, 781 N.Y.S.2d 625 (Sup. Ct. 2003).

<sup>2</sup> Id.

<sup>3</sup> See ABN 51st St. Partners v. City of New York, 724 F. Supp. 1142, 1150 (S.D.N.Y. 1989) (finding that the "goals of the law are to prevent tenant harassment and community displacement ... [by] (a) stabilizing the character of the neighborhood and (b) protecting the stock of housing available for low income residents") and 1156 (finding that "[t]he City sought to address a cycle that was ravaging the stability of a community").

of multiple-dwelling buildings to apply for a Certification of No Harassment from the Department of Housing Preservation and Development (HPD) prior to seeking Department of Buildings (DOB) permits to alter, demolish or change the shape or layout of a building.<sup>4</sup> If HPD finds that no harassment has occurred and furnishes the certificate of no harassment, the building owner may obtain the requested permit from the Department of Buildings and proceed with renovations. If HPD finds that harassment has occurred, the building owner is subject to a “cure” provision, which permits the owner to proceed with renovations<sup>5</sup> only after entering into a restrictive declaration<sup>6</sup> that sets aside as permanently affordable housing at least 28% of the building’s existing floor area<sup>7</sup> or 20% of the built floor area<sup>8</sup> of future development on the lot, whichever is greater. Importantly, this figure is a percentage of the lot’s *total* floor area, not only its residential floor area. This distinguishes the program from the 421(a) tax abatement program, which calculates the affordable housing floor area as a percentage of the residential floor area, not the total floor area—a practice that results in the creation of less affordable housing.<sup>9</sup> The regulations also expressly disallow any mandated affordable housing from triggering an increase in overall FAR, and prohibit landowners from using any affordable housing required by the “cure” provision to satisfy an eligibility requirement for any property tax abatement program, with respect to other buildings that do not contain affordable units.<sup>10</sup>

The anti-harassment rule protects affordable housing in the Special Clinton District in two distinct, but complementary ways. First, the threat of not receiving a Certification of No Harassment creates a serious disincentive for landlords to harass their existing rent-regulated tenants, since landlords who are found to have harassed tenants are required to provide affordable housing in perpetuity. Second, the cure provision helps ensure that owners who have harassed and displaced tenants create new affordable housing in the community. In practice, community advocates report that for many years, the legislation served primarily to prevent the harassment and displacement of existing rent-regulated tenants in the District, with owners opting for the “cure” provision only after the housing market in the District had heated up significantly.

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<sup>4</sup> <http://www1.nyc.gov/nyc-resources/service/1353/certification-of-no-harassment-or-exemption-application>

<sup>5</sup> ZR 96-110(b) describes the permit process: “Unless the Department of Housing Preservation and Development has issued a certification of no harassment pursuant to paragraph (c) of this Section or has certified compliance with the cure provisions of paragraph (d) of this Section, no permit may be issued by the Department of Buildings ... and no special permit may be granted by the City Planning Commission...”

<sup>6</sup> ZR 96-110(d).

<sup>7</sup> ZR 96-110(a)(3).

<sup>8</sup> As opposed to 20% of the total future FAR. If a developer declines to use all available future FAR, 20% of whatever is built must be permanently affordable housing.

<sup>9</sup> Interview with Sarah Desmond, Housing Conservation Coordinators (Feb. 20, 2015).

<sup>10</sup> ZR 96-110(d)(3) (providing that “No portion of the low income housing required under this Section shall qualify to: (i) increase the floor area ratio pursuant to Section 96-21 (Special Regulations for 42<sup>nd</sup> Street Perimeter Area); Section 96-22 (Special Regulations for Eighth Avenue Perimeter Area); any floor area ratio increase provision of the Special Garment Center District, Special Hudson Yards District, Special West Chelsea District, or Section 23-90; or (ii) satisfy an eligibility requirement of any real property tax abatement or exemption program with respect to any multiple dwelling that does not contain such low income housing”).

Although similar provisions are in place in Special Hudson Yards District (§93-90), Special West Chelsea District (§98-70), Preservation Area P-2 of the Special Garment Center District (§93-90), and a subsection of Community District 1 in Greenpoint-Williamsburg (§23-013), this memo focuses exclusively on the Special Clinton District.

#### **A. Definition of “Harassment”**

A key feature of the Special Clinton District is its expansive definition of “harassment.” Harassment is defined as “conduct which prevents or is intended to prevent any person from the lawful occupancy of ... [an eligible] unit or causes or is intended to cause such person lawfully entitled to occupancy ... to vacate such dwelling unit or rooming unit or to surrender or waive any rights in relation to such occupancy.”<sup>11</sup> Prohibited activities include, but are not limited to, the use or threatened use of force,<sup>12</sup> interruption or discontinuance of essential services,<sup>13</sup> failure to comply with certain maintenance requirements,<sup>14</sup> removal of an occupant’s possessions from his or her home,<sup>15</sup> or changing, removing, or otherwise interfering with the locks on a resident’s apartment.<sup>16</sup>

#### **B. Determining Whether Harassment Has Occurred**

A second key feature of the Special Clinton District is the process through which harassment may be proven. Residents may provide written or oral testimony about harassment in lieu of establishing such harassment through a Division of Housing and Community Renewal (DHCR) proceeding or through a private action brought under the Tenant Protection Act.<sup>17</sup> Although a prior finding of harassment may be taken as evidence sufficient to warrant the denial of a Certification of No Harassment,<sup>18</sup> such a prior finding is *not* required to defeat a building owner’s application for a Certification. This level of flexibility is key, as tenants must invest significant

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<sup>11</sup> ZR 96-01(d).

<sup>12</sup> ZR 96-01(a).

<sup>13</sup> ZR 96-01(b).

<sup>14</sup> ZR 96-01(c).

<sup>15</sup> ZR 96-01(d).

<sup>16</sup> *Id.*

<sup>17</sup> The Tenant Protection Act, or Local Law 7, “amended portions of New York City Administrative Code title 27, chapter 2, which contain the Housing Maintenance Code, to provide new and greater protection for tenants experiencing harassment by landlords attempting to force them to abandon their apartments ... [The Code] was amended to define the term harassment as ‘any act or omission by or on behalf of an owner that ... causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy,’ and includes a long list of possible acts and omissions, such as the use of force, interruptions of essential services, baseless court proceedings, and removing the door or the tenant’s possessions (subd. [a][48] ). Section 27-2115 was amended to add a private right of action based on a claim of harassment (subd. [h]), and to provide for injunctive relief and attorneys’ fees (subd. [m][3], [4]).”

Prometheus Realty Corp. v. City of New York, 911 N.Y.S.2d 299, 300 (2010) (upholding Tenant Protection Act).

<sup>18</sup> ZR 96-110(c)(8) provides that HPD “may deny a certification of no harassment without a prior hearing if there has been a finding by the Division of Housing and Community Renewal or any court having jurisdiction that there has been harassment, unlawful eviction or arson at the multiple dwelling during the inquiry period.”

time to receive scant rewards for pursuing harassment claims with DHCR,<sup>19</sup> and tenants generally require the assistance of an attorney to prevail in proceedings brought under the TPA. As a result, a review process that relied exclusively on prior findings of harassment would significantly undercount the actual level of harassment experienced by tenants. Once any such evidence has been presented, the burden shifts to the building owners to prove harassment has not occurred.<sup>20</sup>

Within the Special Clinton District, when a developer who seeks to alter an existing residential building files a permit application with DOB, DOB notifies HPD of that fact, and HPD must then notify local community organizations of the owner's plans to alter the building, inviting comments as to whether there has been any history of harassment on the subject premises.<sup>21</sup> In particular, HPD's rules require that HPD publish notice in *The City Record*<sup>22</sup> and elsewhere and send notices to the local Community Board and other organizations for the purpose of seeking public comment.<sup>23</sup> If HPD determines that there is reasonable cause to believe that harassment has occurred within a specified period, HPD holds an administrative hearing to determine whether to approve or deny the application for a Certificate of No Harassment.<sup>24</sup> HPD may deny the application if it finds that harassment has occurred, either as a result of its own hearing or based on any prior finding of harassment, unlawful eviction, or arson, as determined by DHCR or a court.<sup>25</sup>

<sup>19</sup> The DHCR's Enforcement Unit handles harassment claims, and "[o]wners found guilty of tenant harassment by an administrative order after a hearing is held, are subject to a fine of \$2,000 for a first offense and up to \$10,000 for each subsequent offense. In addition, DHCR will permit no rent increases once there has been a finding of harassment until there is a finding that the harassment has ended." However, the tenant receives no compensation upon a finding of harassment, even though the tenant must appear for an in-person conference with an Enforcement Unit attorney and the building owner, and must then appear in person at a formal DHCR hearing if no agreement can be reached and/or if the owner continues to engage in harassment, which "[i]n many instances ... may require several days of attendance." *Fact Sheet #17*, NEW YORK STATE OFFICE OF HOMES AND COMMUNITY RENEWAL, <http://www.nyshcr.org/Rent/FactSheets/orafac17.htm> (last updated Jan. 20, 2014).

<sup>20</sup> ZR 96-110(c)(2) provides that "There shall be a rebuttable presumption that harassment occurring within the inquiry period was committed by or on behalf of the owner ... and that such harassment:(i) was committed with the intent to cause a person lawfully entitled to occupancy of a dwelling unit or rooming unit in such multiple dwelling to vacate such unit or to surrender or waive a right in relation to such occupancy; and (ii) materially advanced the demolition or alteration in furtherance of which the permit and certification of no harassment are sought."

<sup>21</sup> ZR 96-110(b)(6) provides that HPD "shall publish a notice . . . seek[ing] public comment regarding whether there has been harassment . . ."

<sup>22</sup> *The City Record* is the official journal of the City of New York, and it contains official legal notices produced by New York City agencies. *The City Record*, NYC CITYWIDE ADMINISTRATIVE SERVICES, <http://www.nyc.gov/html/dcasa/html/about/cityrecord.shtml> (last visited Feb. 11, 2015).

<sup>23</sup> See Rules of the City of New York, Title 28, Ch. 10, §10-04, *Administration of Applications for Certifications of No Harassment: Investigation*, online at <http://rules.cityofnewyork.us/content/section-10-04-investigation-0>.

<sup>24</sup> ZR 96-110(c)(7) and Rules of the City of New York, Title 28, Ch. 10, §10-06, *Hearing*.

<sup>25</sup> ZR 96-110(c)(7) and (8) and Rules of the City of New York, Title 28, Ch. 10, §10-07, *Final Determination*.

### C. Look-Back Period and the Role of Community Organizations

A critical feature of the Special Clinton District is its long look-back period for determining whether harassment has occurred in a building. When a building owner applies for a Certification of No Harassment from HPD, the inquiry conducted by HPD considers a period stretching back fifteen years prior to the application date.<sup>26</sup> HPD may extend the period even further if it determines that doing so would further the purposes of the anti-harassment provision.<sup>27</sup>

As a practical matter, the long look-back period enables community organizations that work with rent-regulated tenants to hold building owners accountable for past harassment, even bad acts that may have occurred years ago. This is important as local groups frequently collect evidence of harassment as part of their day-to-day work with tenants and such evidence can be presented at anti-harassment hearings, providing a powerful disincentive to landlords who might be tempted to engage in harassing tactics to displace tenants.

In addition, any evidence of harassment within the look-back period may be sufficient to warrant denial of a Certification of No Harassment, even if the harassment was not committed by the current owner of the building. That provision discourages building owners from harassing tenants, then selling the building at a significant mark-up for development by a new owner, as the new owner would be held accountable for the displacement caused by the seller.

## II. Possible City-Wide Anti-Harassment Legislation

### A. Authority for Legislation

The Special Clinton District provides a strong model for city-wide anti-harassment legislation, and we propose that citywide legislation follow a similar structure, wherein issuance of certain DOB permits to alter or demolish existing residential buildings is conditioned on the building owner first receiving a Certification of No Harassment from HPD. Although this process was adopted in the Special Clinton District through a zoning resolution, we propose that it instead be established as a legislative initiative through City Council.<sup>28</sup>

#### 1. The City's Powers Under State Law

The New York State's General City Law is the zoning enabling statute that sets forth the permissible objectives of zoning regulation, outlines the types of regulation that may be promulgated, and imposes some specific limitations on the zoning power of cities.<sup>29</sup> The City Law

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<sup>26</sup> ZR 96-110(a)(8) (defining the inquiry period).

<sup>27</sup> *Id.*

<sup>28</sup> Two alternative models – the inclusion of anti-harassment provisions in each neighborhood rezoning, or the creation of a Special District that would encompass the entire City – are also possible, but not addressed here.

<sup>29</sup> 1 N.Y. Zoning Law & Prac. § 2:10 (citing N.Y. Gen. City Law § 20(24), (25)). Note that the equivalent zoning enabling act for towns is the Town Law, N.Y. Town Law § 261 et. seq.

grants to cities broad power over land use matters<sup>30</sup> and the authority “[t]o exercise all powers necessary and proper for carrying into execution the powers granted to the city.”<sup>31</sup> As part of this, each city has the power “[t]o maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city.”<sup>32</sup>

The New York Court of Appeals has held that when a city enacts regulations “to correct social and historical patterns of housing deprivation, it is acting well within its delegated ‘general welfare’ power”<sup>33</sup> under the zoning enabling statute.<sup>34</sup> The anti-harassment provision of the Special Clinton District was upheld in the face of a legal challenge in part on the basis of that power.<sup>35</sup>

The Second Circuit has also upheld legislation designed to limit harassment as a valid exercise of the City’s powers. In *Sadowsky v. City of New York*, the court considered a challenge to Local Law 19, which required property owners to acquire a certification of no harassment from HPD prior to undergoing renovation of a single-room occupancy (SRO) building. The court found that

there seems little dispute that Local Law 19 constitutes a valid exercise of New York City’s police power. The law was enacted to prevent the harassment and displacement of SRO residents by restricting the conversion of such buildings to more profitable residential uses where such harassment is found to have occurred. Both the law’s purpose and the means chosen to effect that purpose bear a reasonable relationship to the health, safety or welfare of the public.<sup>36</sup>

We are confident that citywide anti-harassment legislation would likewise be upheld as a valid exercise of the City’s authority over land use matters.

## 2. Council’s Power to Enact Legislation Governing the Duties of DOB and HPD

The City Charter vests the Council with the power to pass laws which it deems “appropriate . . . for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants.”<sup>37</sup> The Charter further provides that DOB “shall enforce . . . laws, rules and regulations as may govern the construction, alteration, maintenance, use, [and] occupancy

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<sup>30</sup> N.Y. Gen. City Law § 20(24).

<sup>31</sup> N.Y. Gen. City Law § 20 (23).

<sup>32</sup> N.Y. Gen. City Law § 20(13).

<sup>33</sup> *Maldini v. Ambro*, 36 N.Y.2d 481, 485-86 (1975) (upholding the creation of a Retirement Community District).

<sup>34</sup> In *Maldini*, *id.* at 405, the relevant enabling legislation was N.Y. Town Law § 261, which grants to towns the authority to enact zoning and planning regulations “[f]or the purpose of promoting the health, safety, morals, or the general welfare of the community.”

<sup>35</sup> *ABN 51st St. Partners v. City of New York*, 724 F. Supp. 1142, 1157-58 (S.D.N.Y. 1989) (referencing *Maldini*’s analysis of a city’s general welfare power under N.Y. Gen. City Law § 20(24)).

<sup>36</sup> *Sadowsky v. City of New York*, 578 F. Supp. 1577, 1580 (S.D.N.Y.) aff’d, 732 F.2d 312 (2d Cir. 1984) (citing *Village of Belle-Terre v. Boras*, 416 U.S. 1, 18 (1974)).

<sup>37</sup> New York City, N.Y., Charter § 28.

... of buildings or structures in the city.”<sup>38</sup> Finally, the Charter obligates HPD to perform all “functions of the city relating to the rehabilitation, maintenance, alteration and improvement of residential buildings and privately-owned housing . . . in accordance with applicable provisions of law.”<sup>39</sup>

Taken together, these provisions of the Charter establish the Council’s power to adopt new legislation requiring DOB to refrain from issuing permits until HPD either issues a Certification of No Harassment, or certifies the building owner’s compliance with a cure requirement (i.e. a restrictive declaration that sets aside a certain percentage of the total residential FAR as permanently affordable housing).

#### **B. Possible City-Wide Legislation and Improvements to the Special Clinton District Model**

The coalition of community groups working on the issue has not yet formulated its consensus policy approach for this model of a proactive disincentive to harassment. But one example of a city-wide mechanism that would be low-friction in the majority of buildings, and still be able to use key aspects of the Special Clinton District mechanism to target problematic buildings where there is reason to suspect that a landlord is deploying harassment in order to take advantage of the financial benefit of vacant apartments, is as follows:

- HPD would be required to keep a city-wide database of buildings with indications of possible harassment. The database would include such records such as Tenant Protection Act filings, New York State Housing and Community Renewal filings, housing court cases initiated against tenants, and serious Housing Maintenance Code violations. HPD’s database would also include reports of harassment submitted by community groups.
- Any buildings with excessive numbers of the records described above—per standards set forth in the legislation—would be flagged as a Building with Harassment Indicators.
- Any landlord seeking an Alt 1 or Alt 2 permit from the Department of Buildings would be automatically and promptly checked against HPD’s Buildings with Harassment Indicators list.
- Landlords applying for permits for buildings that are *not* flagged by the list would be reviewed quickly and would likely be approved by HPD to proceed through the current DOB permit process.
- Landlords applying for permits for buildings that *are* included on the HPD list would be diverted to a process that contains key elements of the mechanism of the Clinton Special District, as described below.

It may also be advisable to have stronger tenant notification requirements for Alt 1 permits. The following mechanisms are key to the effectiveness of the Special Clinton District, and could be made even more effective with the proposed modifications:

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<sup>38</sup> *Id.* § 643.

<sup>39</sup> *Id.* § 1802.

**Requirements for Direct Notice of Permit Applications to Current and Former Tenants, and a Streamlined Process that Invites Feedback When Such Notice is Sent.** When a landlord within the Special Clinton District applies for a Certification of No Harassment, HPD provides notice to the community board, certain elected officials, some community organizations, and the tenants who currently occupy the building. However, the notices provided to tenants are often convoluted and very difficult to decipher, making it hard for tenants to understand the import of the information or their opportunities to present evidence of harassment.<sup>40</sup> As a result, it is up to local CBOs to go door to door in impacted buildings to let people know what is happening. In addition, tenants who have already been pushed out can rarely participate in the process, since the regulations do not require that notice be provided to former tenants and it is often impossible for community organizations to contact them. There are several consequences to this structure:

- Current residents may not know about their opportunity to participate in the process until it's too late
- Community organizers bear the burden of explaining the process to current tenants, without which tenants are generally unable to participate
- Landlords have a strong incentive to push tenants out early so that they are unreachable by the time a permit application is submitted

To correct this, building owners who apply for a designated permit from DOB should be required to simultaneously submit the names and contact information of current and former tenants to HPD, including full name, last known address, last known telephone number, and email address. HPD should then mail individualized notices to such tenants, explaining their right to report experiences of harassment and enclosing an easy form through which to do so. A phone number and web link for the submission of such reports should also be provided. We recommend that these requirements apply to all tenants of a building beginning from the date of enactment of this legislation. Alternatively, we recommend a look-back period of at least 15 years from the date that a permit application is submitted (with a proviso that such requirements will not extend prior to the date of enactment of the legislation).

**Standards to Determine Which Local Organizations Receive Notice of Applications Certifications of No Harassment.** Although HPD's rules provide for notice to local organizations when a permit is sought, it is unclear what standards, if any, govern HPD's determination of which organizations should be notified, and the decision to provide notification to entities other than the Community Board is entirely at HPD's discretion.<sup>41</sup> New legislation should grant the local Community Board the right to designate community organizations to receive such notices, and should permit local organizations to sign up online to receive notices. Because notice can be provided via email or other inexpensive methods and the legislation is most effective when many potential

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<sup>40</sup> Telephone Interview with Sarah Desmond, Executive Director, Housing Conservation Coordinators (Apr. 7, 2015).

<sup>41</sup> Rules of the City of New York, Title 28, Ch. 10, §10-06, *Hearing* (providing that "HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD").

stakeholders are on notice of pending applications for Certification of No Harassment, there is no reason to limit the number of local organizations who can sign up to receive such notices.

**Mandated Reporting by Building Owners.** More of the burden of reporting should be shifted onto landlords seeking permits and away from CBOs and impacted tenants. Landlords should be required to demonstrate their compliance with existing regulations that are designed to ensure quality housing and protect tenants' rights and should be obligated to self-report previous disputes with tenants. In particular, owners should be required to disclose the following records (in each case, records should be provided since the date of enactment of the legislation, or in the last 15 years - the applicable period should be the same as that for mandated notice, as described above):

- Rent registration history of all units
- Copies of all leases signed in the last 15 years
- Annual lease renewals for all rent-stabilized units
- List of all complaints of harassment filed with DHCR and/or suits brought under the Tenant Protection Act, with accompanying documentation, including outcome of all such complaints
- Notices, inspections, and repairs of lead paint hazards

Should the landlord fail to provide any of the required information or be found to have lied in an application for a Certification of No Harassment, the landlord should be barred from re-applying for a Certification of No Harassment for a period of 5 years. This would mirror a provision of the Special Clinton District Zoning Resolution that provides that HPD may bar the submission of new applications for Certifications for up to three years where HPD has found that the application for the Certification contained a material misstatement of fact.<sup>42</sup>

**Mandated Inquiry by HPD.** As part of its investigation into harassment, HPD should be required to affirmatively seek the following information, rather than relying on tenants to report it:

- All complaints of harassment filed with DHCR (to cross-check with the list provided by the permit applicant) over the last 15 years.
- All 311 complaints made by tenants pertaining to heat and hot water or reduction in services complaints, and the results of any investigations undertaken in response to such complaints.
- All complaints to the Department of Buildings on any construction-related matters, and results of any investigations undertaken in response to such complaints.

Gathering information from complaint systems already used by tenants to report problems in real-time would enable HPD to consider such reports alongside any testimony submitted as part of the Certification of No Harassment inquiry process. This would create a more complete record and more fully capture the experiences of tenants who may have already been pressured to leave the area.

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<sup>42</sup> ZR 96-110(c)(5).

***Process That Permits Tenants, Not Only HPD, to Initiate an Administrative Hearing Regarding the Issuance of a Certification of No Harassment.*** In the Special Clinton District, only HPD can initiate a hearing to explore a landlord's eligibility for a Certification of No Harassment. As a result, even when tenants and advocates submit significant evidence suggesting that harassment has occurred, it ultimately HPD has the sole discretion to decide whether an administrative hearing should proceed. It is difficult for tenants and organizers to reach the hearing stage, much less prevail in a claim of harassment, unless an attorney has assisted with crafting a complaint. Moreover, because tenants are not parties in these hearings, they are permitted to testify and present evidence only if HPD calls the tenant as a witness—and the tenant is not entitled to have independent counsel in this process.

Citywide legislation should permit either HPD, or one third or more of the rent-regulated tenants in occupancy to initiate the administrative hearing to consider claims of harassment. This structure would mirror the process that governs 7(a) hearings, which can be brought by the City, HPD, or one third of the tenants in occupancy. Allowing tenants to appear as parties in hearings regarding Certifications of No Harassment would give tenants agency in the process, enabling them to decide on their own whether to testify, whether to cross-examine witnesses presented by the building owner, and so forth. Tenants could appear either pro se, or could choose to be represented by independent counsel. A portion of the \$36M the City has recently earmarked for legal services in neighborhoods facing rezoning initiatives could potentially be set aside for legal advocates to assist CBOs with the preparation of evidence for harassment hearings.

***Expanded Definition of "Harassment."*** The Special Clinton District provides a fairly expansive definition of harassment, but citywide legislation should more closely mirror the language of the Tenant Protection Act, which provides a somewhat more detailed enumeration of forms of harassment. For instance, the TPA describes as harassment “commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy;” the Special Clinton District includes no such provision. (See Appendices A and B for the full definition of harassment under both policies.) The policy should also include under its definition of harassment buy-out offers made without adequate disclosure of a tenant’s right to refuse such offers,<sup>43</sup> as well as repeated unwanted buy-out offers (i.e. offers made after a tenant has notified the owner or his or her agent that such tenant does not wish to be communicated with about buyouts),<sup>44</sup> as landlords often use buy-out offers to pressure rent-regulated tenants to give up their homes, to the long-term detriment of these tenants. In addition, the policy should count illegal hotel uses as a form of harassment, as such uses allow landlords to capitalize on buildings without doing alterations, enabling owners to circumvent the requirements that attach to the issuance of permits for such alterations (i.e. no harassment or new affordable housing).<sup>45</sup> Finally,

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<sup>43</sup> This requirement tracks Int. 700, a Local Law that would make it unlawful for a dwelling owner, or an owner’s agent, to make a tenant buyout offer without first: (1) notifying the tenant that he or she has the right to refuse the buyout offer, and (2) disclosing that the person making the buyout offer is an agent of the tenant’s landlord (where such person is someone other than the landlord).

<sup>44</sup> This language tracks [T2015-2867](#), a bill that proposes to expand the definition of “harassment” to include repeated buyout offers.

<sup>45</sup> Telephone Interview with Sarah Desmond, Executive Director, Housing Conservation Coordinators (Apr. 7, 2015).

the policy should include a catch-all provision for other activities that might be construed as harassment, as both the Special Clinton District and Tenant Protection Act do.

**No Exemption for Non-Profit Housing Developers.** In the Special Clinton District, a Certification of No Harassment is not needed if the building in question is occupied by a non-profit institutional residence or if the residence has been exempted from the requirement by HPD,<sup>46</sup> as generally occurs when a building is being renovated under an HPD program. These exemptions apply even though many of the tax abatements involved with such projects establish affordability for a limited period, typically 15 years. Although non-profit developers may be disproportionately likely to meet the requirements for receipt of Certifications of No Harassment, that is no reason to provide a categorical exemption from the requirements, particularly where the units will not be affordable in perpetuity. In addition, keeping buildings within the ambit of the anti-harassment legislation even when not-for-profit affordable housing developers have been brought in to oversee the “cure” units ensures that the units remain affordable in perpetuity, even if the not-for-profit decides to sell the building in the future. Therefore, the citywide policy should apply equally to all owners.

**Expanded application to both “material alterations” (Alt 1 permits) and certain “incidental” ones (Alt 2 permits) that qualify a building owner for rent increases based on Individual Apartment Improvements (IAIs).** The anti-harassment provision of the Special Clinton District is only triggered when a building owner seeks a permit for a “material alteration” from DOB.<sup>47</sup> Because of this, many building owners have tried to sneak around the program’s requirements by applying for a series of lesser “incidental” (Alt 2) permits, thereby thwarting the purpose and spirit of the rule.<sup>48</sup> We do not think it would be appropriate to expand the anti-harassment provision to apply to applications for *all* Alt 2 permits, as some are truly incidental and should not trigger the reporting requirements set forth here. However, citywide legislation should define circumstances under which application for an Alt 2 permit will trigger the anti-harassment provision.

**Increased fines and penalties for building owners who fail to apply for required DOB permits or submit false information to DOB.** To deter building owners from applying for lesser permits, skipping the permit process altogether, or falsely stating on a permit application that a building is unoccupied, the legislation should create increased fines and penalties for owners who provide false information to DOB or fail to apply for required permits. This provision should be enforced through DOB inspectors in partnership with community organizations, as described below.

**Inquiry period for harassment beginning on the date of enactment of the legislation.** In the Special Clinton District today, the relevant inquiry period for determining whether harassment has occurred at a property is fifteen years prior to the date of application (though HPD has the

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<sup>46</sup> ZR 96-110(a)(7) (defining exempt institutional residences).

<sup>47</sup> ZR 96-109.

<sup>48</sup> Interview with Sarah Desmond, Housing Conservation Coordinators (Feb. 20, 2015).

discretion to extend the inquiry period).<sup>49</sup> We recommend that the inquiry period of citywide legislation begin on the date of enactment. Once building owners have notice of the new set of requirements, there is no reason to limit the inquiry period.

***Prohibitions on the use of public financing for the creation of any affordable units mandated under the policy’s “cure” provision.*** Within the Special Clinton District, developers are not permitted to use “cure” units to satisfy eligibility requirements for tax abatement or exemption programs, and cannot use such units to qualify for a density bonus under the City’s Inclusionary Housing Program. These restrictions exist to ensure that the “cure” provision creates more affordable units than would otherwise have existed under other affordable housing programs. For the same reason, at first, developers were also barred from using HPD or other public financing programs in any newly-created affordable units, instead paying for such units entirely out of pocket. Today, however, building owners *can* use HPD financing programs with “cure” units, effectively allowing them to double-dip and reducing the total number of new affordable units that are created.

To ensure a net gain of affordable housing units under the cure provision, the citywide anti-harassment legislation should limit the use of HPD and other public financing programs to finance the construction, operation, or maintenance of “cure” units. The legislation should also put severe limitations on double dipping by prohibiting landowners from using affordable housing created per the “cure” provision (1) as the basis for eligibility for any program that provides a FAR bonus in exchange for the creation of affordable housing, (2) to satisfy the affordable housing requirements of any future mandatory inclusionary zoning (MIZ) program, or (3) as the basis for eligibility for any tax abatement under the 421(a) program.

***Prohibition on sale of transferable development rights (“air rights”) for developers who have been denied a Certification of No Harassment.*** Within the Special Clinton District, where harassment is found to have occurred but a developer has refused the “cure” requirement of affordable housing, the developer cannot demolish or renovate the building in question – but *can* sell any unused air rights of that property to adjacent parcels. The citywide anti-harassment legislation should prohibit this. If a developer or previous owner is found have engaged in harassment at the subject building, that should prohibit demolition, material alteration, and the sale of development rights associated with the property.

***Language Access.*** Nothing within the Special Clinton District requires the City or owners to provide tenants with any information beyond in English. We recommend that the citywide anti-harassment legislation require the city to provide information in the top six languages. The legislation should also provide that tenants be allowed to submit any information to HPD about harassment in their primary language.

***Dedicated Funding for Organizing.*** Any legislation should mandate significant funding to support local community-based organizations that work with rent-regulated tenants, as such organizations are critical to ensuring that tenants understand their rights and are aware of

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<sup>49</sup> ZR 96-110(a)(8) (defining “Inquiry Period”).

opportunities to report harassment. If it is not possible to fund CBOs throughout the City, the legislation should target CBOs in neighborhoods where the need is greatest, as determined by the rate of loss of rent-regulated units, the number of harassment claims filed in the area, or a comparable measure. Alternatively, these funds could be reserved for neighborhoods that are being rezoned, which would affirmatively forestall displacement within these areas.

Without significant funding for organizing, we do not believe that this legislation will be effective. This is so because anti-harassment legislation crucially depends on tenants reporting and proving harassment, the benefits of reporting harassment in this context will not be immediately obvious to tenants, and the task of collecting the necessary information from tenants is laborious for resource-strapped CBOs. The Special Clinton District's anti-harassment provision has been effective largely due to the efforts and advocacy of Housing Conservation Coordinators, and expanding the model city-wide will necessitate dedicating significant funding for other such groups.

### C. Ongoing Challenges to Proposed Legislation

Even if the proposals we have described here are adopted in full, several challenges will remain. The first is that this legislation will not assist tenants in market-rate units, since landlords can easily rid themselves of such tenants without engaging in harassment tactics. The second is that the legislation will do nothing to prevent landlords from offering buy-outs to tenants in rent-stabilized units, since such buy-outs should not be construed as "harassment" (unless they are repeated and unwanted, as described above). At the very least, though, citywide anti-harassment legislation would help ensure that tenants receive some compensation for departing, rather than landlords making tenants' living conditions untenable in order to achieve that same goal. Third, this proposal would not fully address the fact that tenants receive little immediate benefit from reporting harassment, and therefore may not be inclined to do so. However, we believe that the streamlined reporting procedures proposed here, together with significant funding for local organizing groups, would go a long way toward meeting these challenges. Finally, attaching additional requirements to DOB Alt 1 and Alt 2 permits may lead many building owners to undertake work without the necessary permits, and because DHCR does not consistently require building owners to prove that they have obtained necessary permits as a condition of receiving an IAI rent increase, building owners may be able to exit rent stabilization without ever confronting the requirements of the anti-harassment legislation.<sup>50</sup> Although this problem can be addressed in part through dedicated DOB inspectors who could partner with community groups to curb unpermitted work, as described above, the anti-harassment legislation would be even more effective if paired with state-level policy changes that would direct DHCR to require, as a condition of receipt of a rent increase based on IAIs, proof that a building owner has received the appropriate permits and Certification of No Harassment from DOB. While such a change to DHCR's requirements is beyond the scope of City legislation, it is potentially something affordable housing groups could advocate for at the state level.

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<sup>50</sup> Interview with Sarah Desmond, Executive Director, Housing Conservation Coordinators (Apr. 7, 2015).

### III. Legal Challenges to Citywide Legislation

The Urban Justice Center Community Development Project is in the process of anticipating and analyzing potential legal challenges to citywide anti-harassment legislation, and we will share the results of this research as soon as possible. In the interim, we are confident that the legislation could withstand takings and due process challenges, as the Special Clinton District has withstood such challenges and the citywide legislation we are proposing would be substantially similar. We also do not think that such legislation would present any preemption issues, as New York courts have upheld other city-level legislation to prevent harassment and displacement.

**APPENDIX A: "HARASSMENT" IN THE SPECIAL CLINTON DISTRICT****"Harassment" (96-01)**

"Harassment" shall mean any conduct by or on behalf of an owner of a multiple dwelling that includes:

(a) the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit or rooming unit in such multiple dwelling to vacate such unit or to surrender or waive any rights in relation to such occupancy;

(b) the interruption or discontinuance of essential services which:

(1) interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of a dwelling unit or rooming unit in the use or occupancy of such dwelling unit or rooming unit; and

(2) causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit or rooming unit to vacate such dwelling unit or rooming unit or to surrender or waive any rights in relation to such occupancy;

(c) a failure to comply with the provisions of subdivision (c) of section 27-2140 of article seven of subchapter five of the Housing Maintenance Code which causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit or rooming unit to vacate such unit or to waive any rights in relation to such occupancy; or

(d) any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such dwelling unit or rooming unit or causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit or rooming unit to vacate such dwelling unit or rooming unit or to surrender or waive any rights in relation to such occupancy, including but not limited to removing the possessions of any occupant from the dwelling unit or rooming unit; removing the door at the entrance to the dwelling unit or rooming unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.

#### APPENDIX B: "HARASSMENT" UNDER THE TENANT PROTECTION ACT

"[H]arassment" shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following:

- a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;
- b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;
- c. failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;
- d. commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;
- e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;
- f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or
- g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

*New York City, N.Y., Local Law No. 7 Int. No. 627-A (2008), New York City, N.Y., Local Law No. 7 Int. No. 627-A (2008)*

# HOUSING PRESERVATION – MEMO: EAST HARLEM PRESERVATION

Source: HPD Division of Research and Evaluation, 2014.

## Key East Harlem Preservation Facts

All info is for CB11.

### Rent Stabilized

- 16% of residential units = ~8,800 units
- Risk factors: The biggest reason rent stabilized units are lost is because of vacancy deregulation, which allows apartments to be taken out of rent stabilization when the rent reaches \$2,700 and there is a vacancy. There are several ways for landlords to hit this threshold faster than the normal pace of regulated rent increases would allow. When tenancies turn over, landlords can take a vacancy bonus, increasing the rent on top of the yearly allotted amount. In addition, landlords can pass on a portion of the cost of renovations to individual apartments (IAI's) and the building as a whole (MCI's) as permanent rent increases. With little oversight over the legitimacy of these passed-on costs, unscrupulous landlords can often get away with fraudulent charges as well. These rent-raising mechanisms, along with vacancy destabilization itself, create a strong incentive for landlords to turn over tenancies, which can lead to harassment and displacement of long-time tenants by landlords looking to take apartments market rate. These pressures are exacerbated in rapidly gentrifying neighborhoods, or where rezonings suddenly change local market dynamics and create new opportunities for increased profits.

### Subsidized (HUD, Mitchell-Lama, LIHTC):

- 39% of residential units = ~21,450 units
- 1,854 units in 8 developments lost since 2001
- 6,817 units in 45 developments with a risk date in the next 10 years
- Risk factors: Subsidized housing is privately owned, but publicly subsidized. In all 3 of the programs listed above, affordability is required for a specific number of years from the original development of the building. When the affordability period comes to an end, owners get the choice of whether to renew and maintain their buildings as affordable housing or “opt out” and go market rate. The City, State, and Federal government have incentives and programs to encourage owners to renew their affordability commitments, but these are not always enough to compete with what the market can offer. Depending on the subsidy program and the original construction date of the building, protections for tenants and/or future rent stabilization may or may not be available if owners opt out.

### Unregulated

- 22% of residential units = ~12,100 units
- Risk factors: Tenants in unregulated housing have few protections. While some unregulated units are “naturally” affordable either because market rents are low or because small landlords choose to provide lower rents to long time tenants, landlords of unregulated units always have the option to raise the rent as high as the market will bear either at the end of the lease (if there is one), or with as little as 30 days’ notice for month-to-month tenancies.

# HOUSING PRESERVATION - MEMO: EAST HARLEM COMMUNITY LAND TRUST

**Source: Picture the Homeless**

## Background and Recommendations: The East Harlem/El Barrio CLT

### The Problem:

*The East Harlem/El Barrio Community Land Trust was developed to respond to the growing crisis of affordability in East Harlem and New York City at large.* Among other issues, the East Harlem/El Barrio CLT is a direct response to the neighborhood's disappearing low-cost housing options, due to the large-scale expiration of local subsidized housing, the loss of low-income HDFC coops to the private market, and the lack of funding for rehabilitation of TIL/ANCP buildings. These housing resources, which have long provided *truly* affordable housing for East Harlem residents, are slowly evaporating as buildings (and small buildings in particular) struggle to meet basic operating costs with waning support from HPD.

### Solutions:

*The East Harlem/El Barrio Community Land Trust is a pilot project which presents a new way for the city to utilize the land, buildings, and resources under its control to support affordable housing for low-income New Yorkers.* The project presents an alternative to existing HPD programs like the Affordable Neighborhood Cooperative Program (ANCP) and Multi-Family Preservation Loan Program (MPLP), which rely heavily on private market investment, rather than local and not-for-profit ownership structures. In contrast, the East Harlem/El Barrio CLT presents an opportunity to leverage city-investment and resources to create a permanently affordable and long-term sustainable model of housing, at below-market rents that are truly affordable to long-term East Harlem residents. Moreover, by holding non-residential land and properties in trust, the land trust can preserve affordable commercial spaces, parks and local businesses which are an essential component of community life in East Harlem.

*The CLT model could also be a tool for stabilizing and preserving struggling HDFCs, expiring subsidized buildings, and distressed buildings in the city's Alternative Enforcement Program.* These buildings, currently at risk of being lost to the private market, represent an important source of low-cost housing in our neighborhood, and one which should be preserved at any cost. By regulating the long-term affordability of buildings, enforcing democratic and transparent governance structures, and prioritizing values of stewardship over profit, a CLT structure can support the sustainability of these low-cost housing options over time. Moreover, by supporting multi-building governance models such as MHAs or multi-building cooperatives, small, struggling buildings on the CLT can benefit from economies of scale, helping to stabilize their operating costs and allowing for deeper levels of affordability for residents..

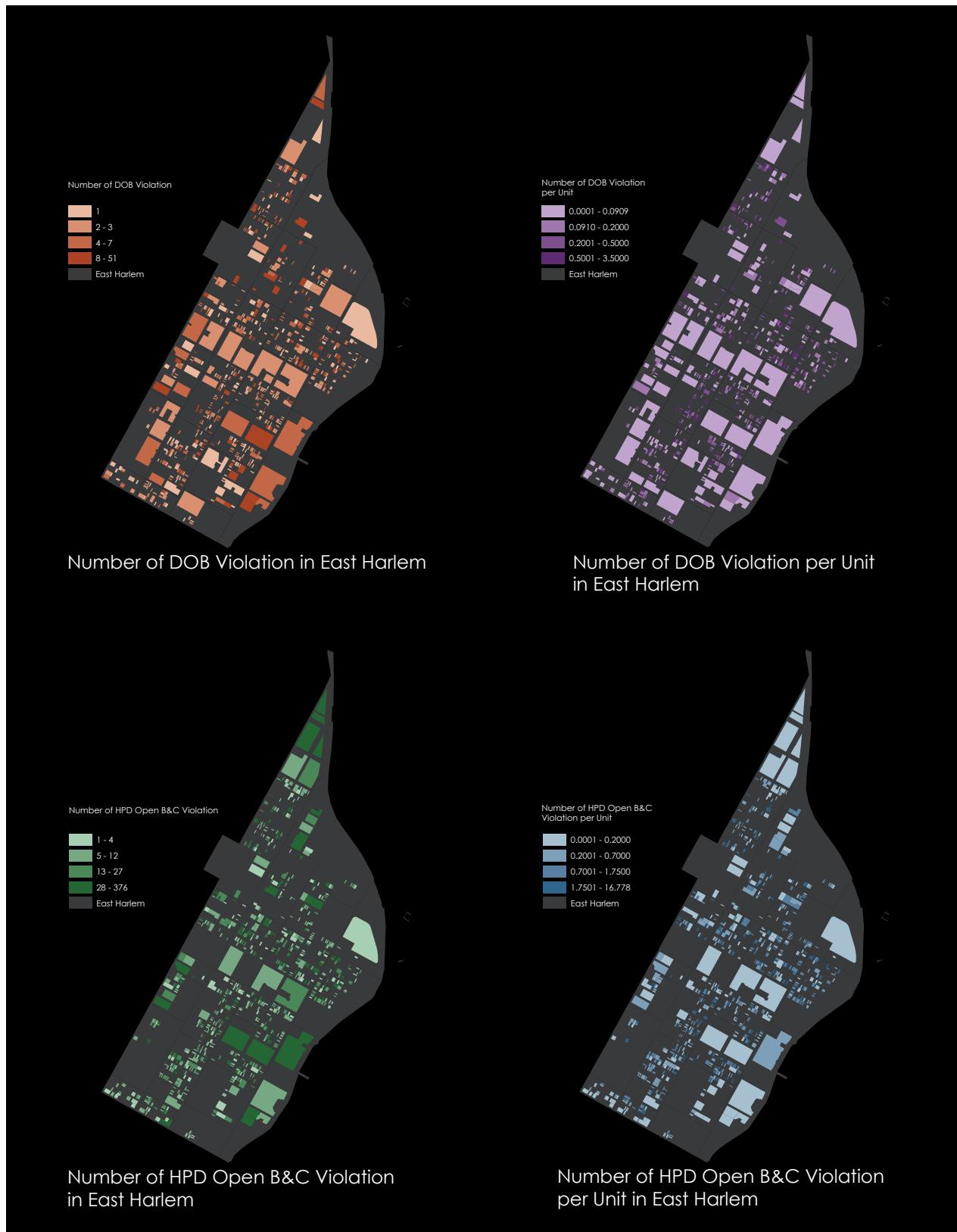
*The East Harlem/El Barrio CLT is a model that is based on permanent non-profit stewardship, rather than for-profit investment.* As such, the success of the CLT depends on significant investment from community supporters, city agencies, and local politicians. This investment, in turn, will result in hundreds of units of housing preserved for low-income families (the vast majority of families in East Harlem,) as well as low-cost storefronts for small businesses and cultural and public spaces. By anchoring homes and community spaces--the heart and soul of East Harlem--the land trust is a crucial component in any rezoning process.

**To ensure the success of the East Harlem/El Barrio Land Trust, we request the following:**

- I. Support the development of the East Harlem/El Barrio Community Land Trust as an alternative disposition option for buildings in HPD's TIL/ANCP programs, at-risk HDFCs, distressed/vacant property in the AEP program, and other city-owned and regulated property. Provide financial and legal resources for the smooth transition of city-owned properties to the CLT, including restoring public financing for the rehabilitation of buildings prior to transfer.
- II. Vacant Land: Remove vacant land in East Harlem from city-wide RFQ/RFP processes, and set up a community land planning process for these lots, in partnership with HPD Department of Neighborhood Planning and the EHEBCLT. Transfer vacant land to the EHEBCLT, which will issue RFQs in partnership with HPD, based on community recommendations.
- III. Vacant or Distressed Buildings: Grant the land under existing city-owned vacant buildings (including AEP buildings discharged from the program due to vacancy) in East Harlem to a CLT, which can then partner with non-profit partners to rehabilitate vacant buildings with public funds.
- IV. Funding for CLT: Support the development of the East Harlem CLT through direct funding and/or unit subsidies. Possible streams of financial support include but are not limited to
  - A. Committed public funding (including HPD funding) for the full rehabilitation of buildings opting in to the CLT.
  - B. Article XI tax exemption for all buildings opting in to the CLT.
  - C. Financing for greening initiatives that promote the long term economic and environmental sustainability of housing on the CLT.
  - D. Section 8 vouchers for eligible residents of housing on the CLT.
  - E. Funding for staffing and administrative costs to support the CLT in its stewardship capacity.

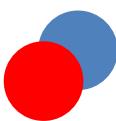
# HOUSING PRESERVATION – BUILDING VIOLATION MAP

Source: Pratt Center for Community Development



# HOUSING PRESERVATION – TENANT HARASSMENT INFO SHEET

Source: Center for Urban Pedagogy



## Protecting Tenants from Harassment

Today, landlords in rapidly changing neighborhoods have a huge incentive to push rent-regulated tenants out. The more low-income renters they can get rid of, the more they can charge *new* tenants for those same apartments. With enough turnover and alterations, the landlord can eventually charge market rents for the apartment. When the City rezones to allow bigger buildings in an area, the landlord has an even bigger reason to push people out: emptying the building allows the landlord to raze it to the ground and build a building with more apartments to rent. This puts more money in the landlord's pocket.

**how things work today:**



tenants are HARASSED



tenants are DISPLACED

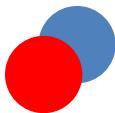


landlord MAKES A PROFIT

There are *some* protections for tenants in this situation, but the fines landlords have to pay if Housing & Community Renewal finds them guilty of harassment are too small to change many landlords' behavior, and winning a court case against a landlord under the Tenant Protection Act can be very difficult. That's where an anti-harassment program could come in.

**how could an anti-harassment program work?**

The Department of Buildings *should not give building or alteration permits* to landlords who have harassed tenants – unless those landlords agree to build new affordable housing. Landlords *should not be able to profit* from pushing tenants out or making their lives so miserable that they leave. If landlords know they

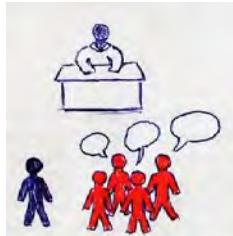


cannot make a lot of money by harassing tenants, they won't do it as often. This new rule, which could go into the zoning text for this neighborhood or a citywide law, would help prevent harassment because landlords will not want to have to make parts of their buildings permanently affordable. And if landlords harass tenants *despite* the new rule, they will have to build affordable housing to pay for what they've done. Either way, this rule would help ensure that low-income people can stay in the neighborhood, even as it changes.

### **the process: denying building permits to bad landlords**

These new rules would require the City to keep a list of suspicious landlords who have many maintenance code violations, housing court cases against tenants, reports of bad behavior from community groups, and other factors suggesting that the landlord might be harassing tenants. If a landlord from this list applied for a building permit from the Department of Buildings, the landlord could not get the permit right away – first, there would have to be a *hearing* to figure out whether the landlord had harassed tenants. Building residents and other people in the community could testify at this hearing. If the landlord is found to have harassed tenants, the landlord would *not* be able to get the building permit from DOB unless they agreed to set aside part of the building as new, permanently affordable housing.

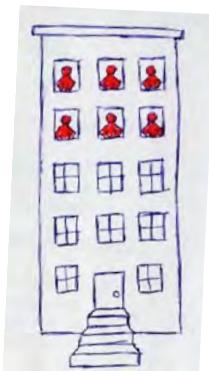
#### ***how it could be:***



**tenants HAVE A SAY**



**tenants GET TO STAY, or**



**some new housing is  
AFFORDABLE**

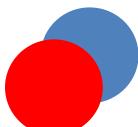
### **benefits of this idea:**

- Helps protect rent-stabilized tenants, especially when the neighborhood housing market changes and market rents go up a lot (which often happens after a rezoning).
- Tenants and community groups have a say in the process.
- It's been tried and it works! This idea is modeled after an anti-harassment rule in the Special Clinton District, which is on Manhattan's far West Side. The rule has existed for many years and has helped protect rent-stabilized tenants there. In fact, a recent study of low- and moderate-income households in New York City showed that the area that includes the Special Clinton District is the *only* wealthy area in the City where the number of middle- and low-income households has *increased* in the last decade, even though the housing market there is very strong and there has been lots of new construction.

### **will this program stop *all* tenant harassment?**

Unfortunately, one idea can't do everything, and this program wouldn't help everybody. People who do not live in rent-stabilized housing would not be protected since landlords can charge those tenants as much as they want and do not need to harass tenants to get rid of them; landlords can just refuse to sign a new lease or raise the rent. This program also would not be helpful in buildings where landlords don't need to make major improvements and don't want to significantly change the building, since those landlords do not need to apply for Department of Buildings permits. Finally, this rule will work best in areas where tenants are *organized* and prepared to present *evidence* of harassment any time a bad landlord tries to get a building permit.

Even with those limitations, this program could create real protections for low-income tenants across the City. The City should create an anti-harassment policy in every neighborhood that's rezoned, or – even better – should pass *citywide anti-harassment legislation* to make sure that rent-stabilized tenants are protected, wherever they are.



# HOUSING PRESERVATION - 2014 EVICTION DATA FROM HOUSING COURT ANSWERS

Source: Housing Court Answers,  
<http://cwtfhc.org/wp-content/uploads/2009/06/CaseFilings2014.pdf>

2/10/2015

ST-30 - L &amp; T Clerks Office

1

CIVIL COURT OF THE CITY OF NEW YORK				Statistical Report of Activity of L & T Clerk's Office
<u>I. INTAKE FILING TYPE</u>	Residential	Commercial	H.P.	Total
1) Non Payment Proceedings	208158	8945	-	217103
2) Holdover	29481	2434	-	31915
3) Article 7-A Proceedings	6	-	-	6
4) RPAPL 711/715 Narcotics	175	9	-	184
5) RPAPL 721 Illegal Lockout	1653	84	-	1737
6) Other Proceedings	0	3	-	3
7) TOTAL PETITIONS (1 THROUGH 6)	<u>239473</u>	<u>11475</u>		<u>250948</u>
8) HP Action by DHPD			6245	
9) HP Action by Tenant			6747	
9) HP Action by Landlord			418	
11) TOTAL HP ACTIONS (8+9+10)			<u>13410</u>	<u>13410</u>
12) TOTAL FILINGS (7+11)				<u>264358</u>
<u>II. JUDGMENTS/WARRANTS</u>	Residential	Commercial	H.P.	Total
1) Failure to Answer Judgments Entered	36858	2380	-	39238
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>36858</u>	<u>2380</u>		<u>39238</u>
4) TOTAL WARRANTS ISSUED	116059	5851		121910
5) Warrants Rejected .....		1,250		
<u>III. MISCELLANEOUS</u>	Residential	Commercial	H.P.	Total
1) Notices of Appeal Filed				1447
2) Appeals Transmitted to Appellate Term				628
3) Jury Demands Filed				163
4) Motions/OSC's Prepared by Clerk				181662
5) Motions/OSC's Filed by Attorney/Litigant				31820
6) Non-Payment Noticed for Trial	127334	0		<u>127334</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>		Statistical Report of Activity of <b>L &amp; T Clerk's Office</b>			
<b>I. INTAKE FILING TYPE</b>		Residential	Commercial	H.P.	Total
1) Non Payment Proceedings		79694	1934	-	81628
2) Holdover		4976	247	-	5223
3) Article 7-A Proceedings		0	-	-	0
4) RPAPL 711/715 Narcotics		106	0	-	106
5) RPAPL 721 Illegal Lockout		362	3	-	365
6) Other Proceedings		0	3	-	3
7) TOTAL PETITIONS ( 1 THROUGH 6 )		<u>85138</u>	<u>2187</u>		<u>87325</u>
8) HP Action by DHPD				1993	
9) HP Action by Tenant				2428	
9) HP Action by Landlord				0	
11) TOTAL HP ACTIONS (8+9+10)				<u>4421</u>	<u>4421</u>
12) TOTAL FILINGS (7+11)					<u>91746</u>
<b>II. JUDGMENTS/WARRANTS</b>		Residential	Commercial	H.P.	Total
1) Failure to Answer Judgments Entered		14070	725	-	14795
2) All Other Judgments		0	0	-	0
3) TOTAL JUDGMENTS ENTERED		<u>14070</u>	<u>725</u>		<u>14795</u>
4) TOTAL WARRANTS ISSUED		46432	1240		47672
5) Warrants Rejected				1,250	
<b>III. MISCELLANEOUS</b>		Residential	Commercial	H.P.	Total
1) Notices of Appeal Filed					126
2) Appeals Transmitted to Appellate Term					12
3) Jury Demands Filed					20
4) Motions/OSC's Prepared by Clerk					80473
5) Motions/OSC's Filed by Attorney/Litigant					8049
6) Non-Payment Noticed for Trial		59426	0		<u>59426</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>				<b>Statistical Report of Activity of L &amp; T Clerk's Office</b>
<b>County:</b> Kings <b>Term(s):</b> <u>1 - 13/2014</u>				
<b>I. INTAKE FILING TYPE</b>				
	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Non Payment Proceedings	56254	2037	-	58291
2) Holdover	11405	666	-	12071
3) Article 7-A Proceedings	5	-	-	5
4) RPAPL 711/715 Narcotics	4	0	-	4
5) RPAPL 721 Illegal Lockout	473	38	-	511
6) Other Proceedings	0	0	-	0
7) TOTAL PETITIONS (1 THROUGH 6)	<u>68141</u>	<u>2741</u>		<u>70882</u>
8) HP Action by DHPD			2236	
9) HP Action by Tenant			1873	
9) HP Action by Landlord			0	
11) TOTAL HP ACTIONS (8+9+10)			<u>4109</u>	<u>4109</u>
12) TOTAL FILINGS (7+11)				<u>74991</u>
<b>II. JUDGMENTS/WARRANTS</b>				
	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Failure to Answer Judgments Entered	8313	463	-	8776
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>8313</u>	<u>463</u>		<u>8776</u>
4) TOTAL WARRANTS ISSUED	31670	1756		33426
5) Warrants Rejected .....		927		
<b>III. MISCELLANEOUS</b>				
	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Notices of Appeal Filed				523
2) Appeals Transmitted to Appellate Term				432
3) Jury Demands Filed				37
4) Motions/OSC's Prepared by Clerk				49633
5) Motions/OSC's Filed by Attorney/Litigant				9525
6) Non-Payment Noticed for Trial	32382	0		<u>32382</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>				<b>Statistical Report of Activity of L &amp; T Clerk's Office</b>
<b>County:</b> <u>New York</u>				
<b>Term(s):</b> <u>1 - 13/2014</u>				
<b>I. INTAKE FILING TYPE</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Non Payment Proceedings	36488	2935	-	39423
2) Holdover	4405	1045	-	5450
3) Article 7-A Proceedings	1	-	-	1
4) RPAPL 711/715 Narcotics	49	9	-	58
5) RPAPL 721 Illegal Lockout	242	29	-	271
6) Other Proceedings	0	0	-	0
7) TOTAL PETITIONS ( 1 THROUGH 6 )	<u>41185</u>	<u>4018</u>		<u>45203</u>
8) HP Action by DHPD			1027	
9) HP Action by Tenant			1095	
9) HP Action by Landlord			41	
11) TOTAL HP ACTIONS (8+9+10)			<u>2163</u>	<u>2163</u>
12) TOTAL FILINGS (7+11)				<u>47366</u>
<b>II. JUDGMENTS/WARRANTS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Failure to Answer Judgments Entered	5395	695	-	6090
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>5395</u>	<u>695</u>		<u>6090</u>
4) TOTAL WARRANTS ISSUED	15991	1980		17971
5) <i>Warrants Rejected</i> .....	509			
<b>III. MISCELLANEOUS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Notices of Appeal Filed				613
2) Appeals Transmitted to Appellate Term				86
3) Jury Demands Filed				77
4) Motions/OSC's Prepared by Clerk				24377
5) Motions/OSC's Filed by Attorney/Litigant				7824
6) Non-Payment Noticed for Trial	18523	0		<u>18523</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>				<b>Statistical Report of Activity of L &amp; T Clerk's Office</b>
<b>I. INTAKE FILING TYPE</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Non Payment Proceedings	28322	1871	-	30193
2) Holdover	7602	439	-	8041
3) Article 7-A Proceedings	0	-	-	0
4) RPAPL 711/715 Narcotics	16	0	-	16
5) RPAPL 721 Illegal Lockout	506	11	-	517
6) Other Proceedings	0	0	-	0
7) TOTAL PETITIONS ( 1 THROUGH 6 )	<u>36446</u>	<u>2321</u>		<u>38767</u>
8) HP Action by DHPD			844	
9) HP Action by Tenant			1141	
9) HP Action by Landlord			369	
11) TOTAL HP ACTIONS (8+9+10)			<u>2354</u>	<u>2354</u>
12) TOTAL FILINGS (7+11)				<u>41121</u>
<b>II. JUDGMENTS/WARRANTS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Failure to Answer Judgments Entered	7764	444	-	8208
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>7764</u>	<u>444</u>		<u>8208</u>
4) TOTAL WARRANTS ISSUED	18204	776		18980
5) <i>Warrants Rejected</i> .....		649		
<b>III. MISCELLANEOUS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Notices of Appeal Filed				141
2) Appeals Transmitted to Appellate Term				86
3) Jury Demands Filed				24
4) Motions/OSC's Prepared by Clerk				20142
5) Motions/OSC's Filed by Attorney/Litigant				4320
6) Non-Payment Noticed for Trial	12492	0		<u>12492</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>				<b>Statistical Report of Activity of L &amp; T Clerk's Office</b>
<b>County:</b> <u>Richmond</u>				
<b>Term(s):</b> <u>1 - 13/2014</u>				
<b>I. INTAKE FILING TYPE</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Non Payment Proceedings	4141	168	-	4309
2) Holdover	888	37	-	925
3) Article 7-A Proceedings	0	-	-	0
4) RPAPL 711/715 Narcotics	0	0	-	0
5) RPAPL 721 Illegal Lockout	50	3	-	53
6) Other Proceedings	0	0	-	0
7) TOTAL PETITIONS ( 1 THROUGH 6 )	<u>5079</u>	<u>208</u>		<u>5287</u>
8) HP Action by DHPD			112	
9) HP Action by Tenant			104	
9) HP Action by Landlord			1	
11) TOTAL HP ACTIONS (8+9+10)			<u>217</u>	<u>217</u>
12) TOTAL FILINGS (7+11)				<u>5504</u>
<b>II. JUDGMENTS/WARRANTS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Failure to Answer Judgments Entered	764	53	-	817
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>764</u>	<u>53</u>		<u>817</u>
4) TOTAL WARRANTS ISSUED	2759	99		2858
5) Warrants Rejected .....			61	
<b>III. MISCELLANEOUS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Notices of Appeal Filed				33
2) Appeals Transmitted to Appellate Term				12
3) Jury Demands Filed				4
4) Motions/OSC's Prepared by Clerk				3706
5) Motions/OSC's Filed by Attorney/Litigant				1800
6) Non-Payment Noticed for Trial	2591	0		<u>2591</u>

Report Submitted by \_\_\_\_\_

2/10/2015

ST-30 - L &amp; T Clerks Office

1

<b>CIVIL COURT OF THE CITY OF NEW YORK</b>				<b>Statistical Report of Activity of L &amp; T Clerk's Office</b>
<b>County:</b> <u>Harlem</u>				
<b>Term(s):</b> <u>1-13/2014</u>				
<b>I. INTAKE FILING TYPE</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Non Payment Proceedings	3259	0	-	3259
2) Holdover	205	0	-	205
3) Article 7-A Proceedings	0	-	-	0
4) RPAPL 711/715 Narcotics	0	0	-	0
5) RPAPL 721 Illegal Lockout	20	0	-	20
6) Other Proceedings	0	0	-	0
7) TOTAL PETITIONS ( 1 THROUGH 6 )	<u>3484</u>	<u>0</u>		<u>3484</u>
8) HP Action by DHPD			33	
9) HP Action by Tenant			106	
9) HP Action by Landlord			7	
11) TOTAL HP ACTIONS (8+9+10)			<u>146</u>	<u>146</u>
12) TOTAL FILINGS (7+11)				<u>3630</u>
<b>II. JUDGMENTS/WARRANTS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Failure to Answer Judgments Entered	552	0	-	552
2) All Other Judgments	0	0	-	0
3) TOTAL JUDGMENTS ENTERED	<u>552</u>	<u>0</u>		<u>552</u>
4) TOTAL WARRANTS ISSUED	1003	0		1003
5) Warrants Rejected .....			60	
<b>III. MISCELLANEOUS</b>	<u>Residential</u>	<u>Commercial</u>	<u>H.P.</u>	<u>Total</u>
1) Notices of Appeal Filed				11
2) Appeals Transmitted to Appellate Term				0
3) Jury Demands Filed				1
4) Motions/OSC's Prepared by Clerk				3331
5) Motions/OSC's Filed by Attorney/Litigant				302
6) Non-Payment Noticed for Trial	1920	0		<u>1920</u>

Report Submitted by \_\_\_\_\_

# HOUSING PRESERVATION - 2014 EVICTION DATA FROM DEPARTMENT OF INVESTIGATION

Source: Department of Investigation,  
<http://cwtfhc.org/wp-content/uploads/2015/03/Evictions-by-Marshall-2014--DOI.pdf>

DEPT OF INVESTIGATION Fax:

Jan 29 2015 12:20pm P002/002

**Summary of Evictions, Possessions & Ejectments Conducted  
for the period January 1, 2014 through December 31, 2014**

	Kings	Queens	Bronx	Richmond	New York	Total
Residential Evictions	228	127	232	24	244	835
Commercial Evictions	0	0	0	0	0	0
Residential Possessions	7680	4415	9348	870	3689	26002
Commercial Possessions	445	464	343	55	656	1963
Evacuations & Possessions, Total	8353	5006	9923	949	4589	28820

Ejectments, Total	0	0	17	1	6	24
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## OF THE CASES ABOVE

Total with APS involvement	480	334	678	41	352	1885
Total Foreclosures	36	86	26	17	9	174

note: data is compiled from reports submitted by city marshals

January 22, 2015

# HOUSING PRESERVATION - "WAREHOUSING RESEARCH" WORKING DOCUMENT

**Source: Urban Justice Center – Community Development Project**

The practice of landlords intentionally keeping apartments vacant has been a major issue in the City for decades, and advocates have been fighting to reduce or eliminate warehousing since at least the 1980s.<sup>1</sup> However, several legal hurdles, including the City's limited taxing power and protections for the property rights of those who warehouse, have made it difficult to eliminate warehousing.

## **The City's Taxing Authority**

One major hurdle to preventing warehousing is the City's limited taxing authority:

"Under the U.S. Constitution, states retain the power to impose any tax that does not violate the U.S. Constitution or their own state constitutions. This means that states are generally free to decide how, what and whom to tax. The U.S. Constitution, however, does not mention local governments. Instead, each state decides what types of local governments to allow and what powers they may exercise. Cities are thus *creatures of the state* unless specific state action alters this relationship by permitting *home-rule* for local governments. The *creature of the state* principle is based on what is known as *Dillon's Rule*, which dictates that municipalities only have the powers explicitly given to them by the state ... Most states, including New York, have modified Dillon's Rule by providing *home-rule* powers to certain or all local governments, either under their constitutions or by statute. Home rule municipalities are ... permitted to operate under their own charter, which establishes local governance and administrative practices. In general, however, home rule authority does *not* extend to autonomy over the power to tax, with few exceptions.

**The only tax-related action that NYC, a home rule jurisdiction, is permitted to take without NYS legislative and gubernatorial approval is the setting of its annual Real Property Tax rates and even this action is taken within NYS constitutional and statutory constraints. All other actions related to the NYC Real Property Tax and to any other tax are subject to initiation or approval by the NYS Governor and Legislature.”<sup>2</sup>**

Because of these limitations, the City cannot simply decide to adopt tax policies to discourage warehousing, such as a higher tax rate for properties that sit vacant for years. Instead, the City would

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<sup>1</sup> Alan Finder, "Tax Law Used to Discourage Warehousing," N.Y. Times, Mar. 20, 1987, <http://www.nytimes.com/1987/03/20/nyregion/tax-law-used-to-discourage-warehousing.html>.

<sup>2</sup> Marilyn M. Rubin, A GUIDE TO NEW YORK CITY TAXES: HISTORY, ISSUES, AND CONCERNs i-ii, Dec. 2010 (<http://pjsc.magikcms.com/tax%20guides/CityGuideWeb.pdf>) (emphasis added). See also *New York City Taxes - Trends, Impact, and Priorities for Reform* 13-14, Fiscal Policy Institute (Jan. 13, 2015), <http://fiscalpolicy.org/wp-content/uploads/2015/01/NYC-Tax-Report-Jan-13-2015.pdf> (explaining that "The property tax is the only tax over which the City has authority to set the rate without prior approval from the State. This is so because of the unique role the property tax plays in balancing the City budget. When the budget is adopted, total budgeted expenditures and the forecasted revenue from all non-property taxes and non-tax revenue sources are determined. The difference between the budgeted expenditures and the forecasted revenues determines the property tax revenue needed to balance the budget. The City Council then fixes the property tax rate to generate the needed property tax revenue.")

need to seek approval for any such tax reform from Albany. Although anti-warehousing activists succeeded in winning tax reforms that eliminated favorable tax rates for vacant properties in Manhattan north of 110th Street<sup>3</sup> - a reform that discouraged warehousing - progressive tax reform efforts have proven unsuccessful on many occasions. As a recent example, this past year Mayor de Blasio advocated for a new "mansion tax" that would have applied to home sales above \$1.75M. The reform would have permitted the City to levy a tax equal to 1% of the entire purchase price of such homes, plus 1.5% on any amount over \$5 million. The Mayor's office estimated that the tax would have generated about \$200M annually, which the City hoped to use to finance affordable housing.<sup>4</sup> However, the mansion tax failed to win the support of Albany lawmakers, and it was defeated in June.<sup>5</sup>

#### **Property Rights Issues**

One way to discourage warehousing is to reduce the profit motive to warehouse, which is what an anti-warehousing tax would accomplish. The second way is to simply disallow the practice of warehousing by enacting laws that establish that it is unlawful to allow a property to remain unused over a lengthy period of time.

#### **Models from Other Jurisdictions**

It is challenging to find useful anti-warehousing models from other jurisdictions because in other cities, vacancies primarily result "from two main causes: the foreclosure crisis as well as long-term urban decline, depopulation, and disinvestment."<sup>6</sup> In other words, vacancies elsewhere are caused by weak housing markets, where local governments can consider acquiring and then reselling or converting properties in order to create more affordable housing.<sup>7</sup> In East Harlem, though, the problem does not appear to be a weak housing market, but the preferences of landlords who either derive significant rent from ground-floor commercial tenants and cannot be bothered with handling residential tenants on

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<sup>3</sup> "Unlocking the Apartment Warehouse," *Gotham Gazette*,

<http://www.gothamgazette.com/index.php/archives/264-unlocking-the-apartment-warehouse>.

<sup>4</sup> "De Blasio mansion-tax hike may keep home prices below \$1.75M, IBO says," *Bloomberg News* (June 1, 2015), [http://www.crainsnewyork.com/article/20150601/REAL\\_ESTATE/150609989/de-blasio-mansion-tax-hike-may-keep-home-prices-below-1-75m-ibo-says](http://www.crainsnewyork.com/article/20150601/REAL_ESTATE/150609989/de-blasio-mansion-tax-hike-may-keep-home-prices-below-1-75m-ibo-says).

<sup>5</sup> Erin Durkin, "Mayor de Blasio disappointed Albany lawmakers passed on 'mansion tax'," *Daily News* (June 28, 2015), <http://www.nydailynews.com/news/politics/mayor-miffed-lawmakers-passed-mansion-tax-article-1.2274714>.

<sup>6</sup> "Vacant and Abandoned Properties: Turning Liabilities Into Assets," U.S. DEPT OF HOUSING AND URBAN DEVELOPMENT (Winter 2014), <https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html>.

<sup>7</sup> See e.g. Terrence McCoy, "Baltimore has more than 16,000 vacant houses. Why can't the homeless move in?" *The Washington Post* (May 12, 2015), [https://www.washingtonpost.com/local/baltimore-has-more-than-16000-vacant-houses-why-cant-the-homeless-move-in/2015/05/12/3fd6b068-f7ed-11e4-9030-b4732caefe81\\_story.html](https://www.washingtonpost.com/local/baltimore-has-more-than-16000-vacant-houses-why-cant-the-homeless-move-in/2015/05/12/3fd6b068-f7ed-11e4-9030-b4732caefe81_story.html).

upper floors, or owners who hope to eventually sell their buildings and do not want residential tenants to interfere with that process.<sup>8</sup>

However, there are a few ideas that NYC could consider:

- Vacant property count. Picture the Homeless and others are advocating for legislation that would require the City to conduct an annual count of vacant properties, a law that would help the City better track its vacancies, identify vacancy patterns, and potentially identify concrete solutions.
- Registration and fees. Many jurisdictions require owners to register vacant properties and pay fees that escalate the longer a property remains vacant. These fees can encourage owners to return properties to productive use, while generating revenue to support counting efforts.<sup>9</sup>

#### **Use of Eminent Domain to Acquire Vacant Properties**

One idea that the City could consider is the use of eminent domain to acquire vacant properties. Eminent domain is the legal process through which governments can acquire private land for a public use, benefit, or purpose. The government must follow certain legal procedures to acquire the property and its actions are subject to constitutional limitations, including the requirement that the property owner be given "just compensation" (in other words, the government cannot simply take the property, but must pay the owner a fair price). However, as interpreted by the U.S. Supreme Court, the public purpose requirement is fairly lax, and courts generally defer to cities in the exercise of their eminent domain powers.

Though the City invokes its eminent domain powers relatively rarely, the City has used its powers to advance development-related goals, and it could do so for the purpose of discouraging warehousing and encouraging affordable housing construction. As a recent example, the City recently announced its intent to use eminent domain to seize several beachfront properties in Coney Island.<sup>10</sup> However, the City will likely be reluctant to use its eminent domain powers in this manner, in part because private landowners are likely to vigorously defend their property rights and bring lawsuits challenging either the condemnation itself, or the amount of compensation the City offers to provide for the property in question. Also, even if no suits are brought, the City would still have to invest a significant amount of money to acquire the properties in question, which it seems unlikely to do.

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<sup>8</sup> Joseph Berger, "In East Harlem, 'Keep Out' Signs Apply to Renters," *The New York Times* (Oct. 30, 2011), [http://www.nytimes.com/2011/10/31/nyregion/east-harlem-landlords-keep-apartments-sealed-up.html?\\_r=0](http://www.nytimes.com/2011/10/31/nyregion/east-harlem-landlords-keep-apartments-sealed-up.html?_r=0).

<sup>9</sup> "Vacant and Abandoned Properties: Turning Liabilities Into Assets," *supra* note 5.

<sup>10</sup> Rich Calder, "City to seize and rebuild Coney Island property through eminent domain," *New York Post* (Sept. 28, 2015), <http://nypost.com/2015/09/28/city-to-seize-and-rebuild-coney-island-property-through-eminent-domain/>.

# HOUSING PRESERVATION - 596 ACRES TAX LIEN SALE RECOMMENDATIONS

Source: 596 Acres



540 President Street 2E  
Brooklyn NY 11215

Paula Z. Segal, Esq.  
Executive Director  
Director of Policy & Advocacy

(718) 316-6092 x2  
[paula@596acres.org](mailto:paula@596acres.org)

July 15, 2015

**To: Tanisha Edwards**

## RE: IMPACTS OF THE TAX LIEN SALE ON NOT-FOR-PROFITS AND NEIGHBORS OF VACANT AND ABANDONED PROPERTIES; RECOMMENDATIONS

596 Acres is New York City's community land access advocacy organization. In three years, we have helped 32 groups create new pocket parks, community farms and gardens on publicly owned vacant land. We also help protect existing privately owned community resources. We have first-hand experience of the impact of vacancy and abandonment on New York City neighborhoods due to the requests for information that we handle from neighbors of such properties through our intake and organizing staff and specifically through our work with two gardens on properties that were abandoned by their prior owners in the 1990s.

### IMPACTS ON EXISTING COMMUNITY SPACES

The current tax lien sale structure **puts existing community spaces at risk** of being foreclosed on by private entities – threatening legacy spaces like the 1100 Bergen Street and Merrick Marsden Community Gardens.

1100 Bergen Street Community Garden in Crown Heights was founded by neighbors cleaning up vacant lots on their block in 1980s; in 1989, the lots comprising the garden were purchased by the Trust for Public Land and transferred to the 1100 Bergen Street Block Association. The Garden was likely eligible for a not-for-profit tax abatement but gardeners were never advised and they never got one. Instead, the former president of the garden association simply paid the annual property tax bills. When he passed away, those tax bills continued to be sent to his home, tax debt accrued and that debt was sold to through the lien sale. The bank that purchased the lien note initiated collection actions that could have resulted in a foreclosure and the disappearance of the garden. To protect this historic Crown Heights space, 596 Acres worked with the Brooklyn Queens Land Trust to pay off the debt and protect the property.

# 596 ACRES

The Block Association and the Trust had to raise the past-due amount and interest accrued while the debt was with the bank post-sale. This amount, in excess of \$20,000, could have been forgiven by the City had it not been sold since the garden was eligible for a tax abatement. The bank, having purchased the debt for its face value, claimed it was not in a position to forgive it. Once the foreclosure was forestalled, the Block Association transferred the property to the Brooklyn Queens Land Trust, a larger organization with greater capacity for administration in February 2015.

The Merrick Marsden Association, owners of an open space in Jamaica, Queens, that has served the community since 1967, had a nearly identical close call last year that resulted in a fundraising frenzy to pay off the debt that the City sold and a subsequent transfer of the property to the Brooklyn Queens Land Trust in January 2014.

We are proud of our work preserving these legacy spaces, but these close calls are illustrative of how the lien sale currently puts community based organizations that serve their neighborhoods via properties that they own – gardens, day care facilities, community centers – are undermined by the sale of their debt.

Another Crown Heights garden is currently at risk: a tax lien was sold and the same recorded on June 18, 2015, against a lot owned by the inactive not-for-profit Imani Housing Development Corporation, which is in the center of the New York Restoration Project-managed Imani I Garden. Some intervention is likely necessary to make sure that ownership of the property continues to facilitate community uses, but the private bank that purchased the lien is not the right party. If tax debt against this not-for-profit entity was exempt from the lien sale, then the City could use the Third Party Transfer Program to transfer title the New York Restoration Project, the not-for-profit organization that owns the neighboring lots to the north and south. As it stands now, the garden is at risk of being divided.

## NEIGHBORS OF VACANT AND ABANDONED PROPERTIES

Where abandoned properties with absentee owners are accruing tax debt to the City, the fact that that debt is sold to private entities eliminates the City's ability to intervene in the abandonment and aid the local community in transforming eyesores and dumping grounds into positive resources. Vacant and abandoned properties on which no taxes are paid could be a source of properties for the creation of new open spaces and affordable housing opportunities. But **when the debt is sold to private collectors, these opportunities are foreclosed while neighborhoods suffer boarded up buildings and vacant lots full of debris.**

Two community gardens we work with exist because neighbors chose to get involved where the City could not and transform dereliction into abundance: the Roger That and Maple Street Community Gardens are both on properties abandoned by their owners on which tax debt (and liens for HPD's removal of the buildings that used to be there) were not paid for decades. Both gardens are now at risk of disappearing as private for-profit developers emerge and claim to purchase deeds from the heirs of the owners who abandoned them over twenty years ago. Had the City stepped in to collect past-due accounts on these vacant properties at an earlier moment, they could now be safely in the inventory of the Parks Department (or have been transformed into much-needed permanently affordable housing).

# 596 ACRES

## RECOMMENDATIONS

**Our recommendation is that the following properties should be excluded from the tax lien sale and instead, where appropriate, routed to the Third Party Transfer program:**

- **All occupied properties owned by not-for-profit corporations.** Not-for-profit corporations hold property in service of their missions, whether the provision of community services, like day cares and community gardens, or affordable housing. When such organizations fail to pay property taxes or apply for appropriate tax abatements and their debt is sold to private entities for collection and potential foreclosure, key community services are unnecessarily placed at risk. The tax lien sale allows properties acquired through charity and public money to become private properties when buyers of the tax debt foreclose. To protect community gardens and open spaces, when making this change, the statutory definition of “occupied” should include “in use as a community garden or open space.”
- **All unoccupied properties, including vacant residential and commercial properties and vacant lots.** Unoccupied properties, held empty by speculators or for lack of development resources, are critical resources that could be used for affordable housing and other important public uses. When these properties accrue unpaid tax debt, and that debt is sold, the City gives up its power to intervene to transform these wasted spaces into positive use. Rather than allowing such properties to lie fallow and accumulate more debt, leaving holes in neighborhoods, the City should use its resources to facilitate the transfer of these properties, via TPT, to responsible non-profit owners who can use these properties for the public good.

I am happy to provide more details about the examples above and to further discuss our recommendations, which are also incorporated into the New York City Community Land Initiative’s recommendations for reform of the tax lien sale with a broader view to preserving and creating crucial affordable housing and open space in New York City neighborhoods; they which are included here as an attachment.

# HOUSING PRESERVATION - NYCCLI TAX LIEN SALE RECOMMENDATIONS

Source: NYC Community Land Initiative



Fighting for vibrant, equitable and sustainable housing and neighborhoods through community ownership of land

To: Tanisha Edwards

Re: Recommendations Concerning the Tax Lien Sale

Date: July 15, 2015

Thank you for inviting the New York City Community Land Initiative (NYCCLI) to submit recommendations for proposed changes to the tax lien sale. NYCCLI is an alliance of social justice and affordable housing organizations and academics committed to preserving and creating housing for all New Yorkers—especially those who are homeless or have extremely low incomes. Our alliance includes grassroots, community- and faith-based, and city-wide organizations, and labor groups who see Community Land Trusts (CLTs) as a promising tool in the fight to address the root causes of homelessness and displacement. CLTs are nonprofit, community-based organizations that own land and lease its use to affordable housing providers (nearly always nonprofit, in the case of multifamily housing) and stewards of open space and community gardens. This ownership structure keeps public and local community oversight over land use, strengthening communities, allowing for flexibility, and ensuring the long-term durability of affordability restrictions. Because of their unique legal structure and stewardship mission, CLTs offer the best mechanism for long-term preservation of affordable housing and retention of housing subsidies.

NYCCLI is deeply concerned about the severe lack of affordable housing in New York City – especially housing that is affordable to people with extremely low incomes. The City has failed to create new housing that is truly affordable to this population, and more existing affordable units are lost every year as gentrification, speculation, and rising costs push people from their homes. The tax lien sale, as currently structured, exacerbates this problem as it places additional and unsustainable financial pressure on occupied low-rent units, ultimately leading to the loss of those units as affordable housing. NYCCLI is also concerned about the vulnerability of existing not-for-profit property owners to losing their key property assets through the sale of accrued tax debt to the private market.

The Tax Lien Sale and Third Party Transfer (TPT) program could be transformed to become robust engines for creating and preserving truly affordable housing and community open space in New York City – housing that would be affordable for people with extremely low incomes and that would stay affordable for many generations, and hopefully forever. We urge

the Council to change the programs along these lines, and we make the following recommendations:

- 1. Expand the pool of properties that go through the Third Party Transfer program instead of the Tax Lien Sale.** The Third Party Transfer program could and should become a robust mechanism for maximizing affordable housing for very low and extremely low income households. To achieve this, certain changes to the Third Party Transfer program are necessary. The Council should:
  - Clearly state that the legislative intent and purpose of the Third Party Transfer program is to create and preserve affordable housing.
  - Mandate the ultimate disposition of all buildings in the TPT program to a non-profit, community-based housing developer, with a preference for community land trusts. Such entities have the skills and experience to create and preserve truly affordable housing, and are much better suited to this task than private developers. (Private developers could still partner with nonprofit organizations to develop the housing, as long as the ultimate disposition of the property is to a nonprofit organization)
  - Require permanent affordability for all buildings moving through TPT.
  - In considering dispositions from the TPT program, encourage the City to take a community-based approach, grouping buildings by geographic proximity and transferring them together to a CLT or mutual housing association.
  - Expand the pool of properties in TPT to include unoccupied properties and buildings that are financially distressed, as described further below.
- 2. Exclude certain properties from the lien sale.** The last amendment to the tax lien law excluded from the lien sale HDFC rental properties, Sandy-affected (Build it Back) properties, and properties owned by active-duty military personnel, the elderly and people with disabilities. NYCLC strongly supports these changes, and we suggest that additional categories of buildings be excluded from the lien sale, including:
  - **All owner-occupied 1-4 family homes, where an individual is the owner of the home.**
  - **All occupied properties owned by not-for-profit corporations.** Not-for-profit corporations hold property in service of their missions, whether the provision of community services, like day cares and community gardens, or affordable housing. When such organizations fail to pay property taxes or apply for appropriate tax abatements and their debt is sold to private entities for collection and potential foreclosure, key community services are unnecessarily placed at risk. The tax lien sale allows properties acquired through charity and public money to become private properties when buyers of the tax debt foreclose. To protect community gardens and open spaces, when making this change, the statutory definition of “occupied” should include “in use as a community garden or open space.”
  - **All unoccupied properties, including vacant residential and commercial properties and vacant lots.** Unoccupied properties, held empty by speculators or for lack of development resources, are critical resources that could be used for

affordable housing and other important public uses. When these properties accrue unpaid tax debt, and that debt is sold, the City gives up its power to intervene to transform these wasted spaces into positive use. Rather than allowing such properties to lie fallow and accumulate more debt, leaving holes in neighborhoods, the City should use its resources to facilitate the transfer of these properties, via TPT, to responsible non-profit owners who can use these properties for the public good.

- **All buildings with AEP liens.** In the Alternative Enforcement Program (AEP), the City identifies the 200 most physically distressed buildings and, if owners do not make repairs, enters the buildings, corrects the hazardous conditions, and bills the owners for the repairs. Unpaid repair bills become tax liens. These properties should move through the Third Party Transfer system. Our research shows that more than half of the buildings in the AEP program are small buildings, and more than 30 percent of buildings in the AEP program are in close physical proximity to other AEP buildings. The City could take a strategic approach to these buildings, grouping them together in clusters based on geographic proximity, and then transferring them together to a CLT or mutual housing association.
- **All financially distressed multi-family residential properties, even if such properties are not yet physically “distressed.”** The City should widen the pool of properties that go through TPT by excluding from the lien sale buildings that are not physically “distressed,” but where the residents have low incomes. Such buildings could include large rental buildings that are over-leveraged, so that rental payments do not meet the debt burden, and smaller buildings in which residents simply cannot afford to pay more to cover costs of routine maintenance. Such buildings may not yet be “distressed” as defined by current law, but if they take on increased debt burden through a tax lien sale or are left to themselves, they will eventually become distressed, because the rent rolls are insufficient to meet expenses.

We welcome the opportunity to participate in this conversation, and we hope the Council will view NYCLCI as a valuable resource. We are happy to provide additional information about CLTs if that would be helpful. Please contact us at 212-680-5100. Thank you.

Prepared by:  
 596 Acres  
 New Economy Project  
 NYC Council of Housing Development Fund Companies  
 John Krinsky, Professor of Political Science, City College, CUNY

View list of NYCLCI Members and Endorsers at: [nyccli.org/about/members-and-endorsers/](http://nyccli.org/about/members-and-endorsers/)

# NYCHA – FAQ ON NYCHA INFILL LAND DISPOSITION PROCESS

**Source: New York Environmental Law and Justice Project**

## NYCHA INFILL DEVELOPMENT PLAN— A GUIDE TO “SECTION 18 DISPOSITIONS”

### **1) What is a “Section 18 Disposition”?**

Section 18 refers to the section of the Housing Act of 1937 (“the Act”) which allows a public housing authority, such as NYCHA, to “demolish or dispose” of public housing properties which are supported by federal funding under the Act.

For purposes of Section 18, a “disposition” refers to any kind of sale, lease (longer than 1 year), or other transaction through which NYCHA conveys or transfers its interest in public housing property to another party.

### **2) How does Section 18 apply to NYCHA’s current proposal to build new, market-rate residential towers at 8 targeted developments, including Smith Houses?**

Despite any impression you might get from the recent public statements of NYCHA Chairman John Rhea, NYCHA is very different from an ordinary private property owner—even though they hold title to public housing properties, they cannot just sell or lease these properties whenever they want.

Since it was first formed, NYCHA has depended upon federal assistance to acquire and maintain its properties. This federal assistance comes with various conditions which are designed to make sure that the funds are only used for the purpose of providing decent and safe housing for low-income residents. Consequently, under Section 18 of the 1937 Housing Act, NYCHA is not allowed to “dispose” of any public housing property supported by federal assistance without first getting the approval of the Secretary of the U.S. Department of Housing and Urban Development (“HUD”).

Since Section 18 applies to the Smith Houses, NYCHA cannot move forward with any plans to lease land within Smith Houses to private developers without first getting HUD approval.

HUD has established a set of regulatory rules which NYCHA must follow in order to get approval for a Section 18 Disposition. HUD’s Section 18 rules are published in the Code of Federal Regulations at 24 CFR § 970, which you can find at:  
<http://edocket.access.gpo.gov/2008/pdf/E8-1014.pdf>.

You can also find HUD’s own explanation of its Section 18 regulations at:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/centers/sac/demo\\_dispo/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/centers/sac/demo_dispo/).

### **3) What is NYCHA required to do to get HUD's approval for a Section 18 disposition?**

NYCHA must formally apply to HUD for written approval of any Section 18 disposition. In the application, NYCHA must make specific “certifications” and provide HUD with “supporting information”, as listed under 24 CFR § 970.7.

Below is a list of some of the most important certifications and supporting information NYCHA is required to provide:

- A certification that NYCHA described the disposition in its Annual Plan and timetable, and that the description in NYCHA’s Annual Plan is identical to its Section 18 application (§ 970.7(a)(1));
- A description of all identifiable property, including land, dwelling units, and other amenities, involved in the proposed disposition (§ 970.7(a)(2));
- A description of how NYCHA will sell or lease the property, along with a timetable that identifies when the sale will be closed, or when the lease agreement will be executed (§ 970.7(a)(3)–(4));
- A statement justifying why the disposition is in the “best interest” of existing residents (§ 970.7(a)(5))—see answer to Question #4, below, for an explanation of this “best interest” requirement;
- A description of NYCHA’s “consultations” with residents, any resident organizations, and the Resident Advisory Board, along with supporting evidence of these consultations (§ 970.7(a)(7))—see answer to Question #5, below, for an explanation of this “resident consultation” requirement;
- Evidence that NYCHA followed the procedure for first offering the property for sale to the residents, before making it available to anyone else (§ 970.7(a)(8))—see answer to Question #6, below, for an explanation of this “offer of sale” requirement;
- An estimate of the fair market value of the property, established on the basis of one independent appraisal (unless HUD specifically finds this to be unnecessary) (§ 970.7(a)(9));
- Estimates of the proceeds NYCHA will receive (both gross and net) from the disposition, and an itemized accounting of how NYCHA will use all such proceeds (§ 970.7(a)(10));
- A copy of a resolution by NYCHA’s Board of Commissioners approving the specific disposition application, signed and dated after all resident and local government consultation has been completed (§ 970.7(a)(13));
- Evidence that the disposition application was developed in consultation with local government officials, including a summary of all dates, meetings, and issues raised by the local government officials, along with NYCHA’s responses to these issues, and a letter from the Mayor demonstrating that NYCHA properly consulted with local government (§ 970.7(a)(14));
- An approved environmental review of the proposed disposition that meets all HUD regulations under the National Environmental Procedures Act (§ 970.7(a)(15));
- A certification that the disposition application does not violate any consent decree, settlement agreement, or other court order or agreement (§ 970.7(a)(16)).

### **4. What are NYCHA’s “resident consultation” obligations under Section 18?**

Under 24 CFR § 970.9(a) of HUD’s Section 18 regulations, NYCHA is required to “consult with residents who will be affected” by the disposition. NYCHA is also required to provide “evidence that the application was developed in consultation with residents who will be affected by the proposed action, any resident organizations for the development, [NYCHA]-wide resident organizations that will be affected . . . and the Resident Advisory Board (RAB).”

Unfortunately, HUD has generally refused to be more specific about what “resident consultation” really means. Each Section 18 consultation is reviewed on a “case-by-case” basis, because HUD believes it is important to allow public housing authorities “flexibility.” There must be some form of a meeting with residents, but there is no minimum requirement as to the number of meetings.

However, HUD’s Section 18 regulations include one very important requirement. Under 24 CFR § 970.9(a), NYCHA must provide HUD copies of any written comments they receive from residents, along with NYCHA’s response to the comment.

As a result, written comments are one of the best ways to make sure that NYCHA does not mischaracterize how you actually feel about the plan to develop market-rate housing on your baseball field, gardens, open space, and parking lot at Smith Houses. Whenever you submit a written comment to NYCHA, it is important to include the following language: “NYCHA is legally obligated to forward all comments to HUD under 24 CFR § 970.9(a).”

## **5. What criteria will HUD use to evaluate NYCHA’s Section 18 application?**

HUD will first look at whether NYCHA included all of the required certifications and supporting information listed in the answer to Question #3.

On its face, HUD is supposed to disapprove any Section 18 application if it contains statements or information that are inconsistent with NYCHA’s Annual Plan or that contradict other information available to HUD. 24 CFR § 970.29(a). HUD is also supposed to disapprove any Section 18 application that was “not developed in consultation with” affected residents, resident councils or advisory boards, and local government officials.

The other major criteria is that NYCHA must certify to HUD that keeping the properties “is not in the best interests of the residents.” 24 CFR § 970.17 (emphasis added). Because the land NYCHA wants to lease to private developers is unbuilt, NYCHA has to certify to HUD that all this land “exceeds the needs of the development”, or that leasing it away is “incidental to, or does not interfere with, continued operation of the remaining portion of the development.” 24 CFR § 970.17(d).

This is why it is extremely important to send NYCHA written comments explaining why you think it is actually in your “best interests” to keep your parking lot, baseball field, open spaces, gardens, and playgrounds at Smith Houses, rather than let a private developer build market-rate housing on top of them. Explain how these amenities are “essential” to your life at Smith Houses, so that NYCHA cannot get away with certifying to HUD that the baseball field, open spaces, gardens, parking lot, and playgrounds are all just “excess” or “incidental” to you, the residents of Smith Houses.

#### **6. What is the Section 18 “offer to sell” requirement?**

Under Section 18, NYCHA cannot dispose of any portion of public housing property without first “offer[ing] the property proposed for disposition to any eligible resident organization, eligible resident management corporation . . . or to a nonprofit organization acting on behalf of the residents at any development proposed for disposition.” 24 CFR § 970.9(b)(1).

However, this “offer to sell” requirement does not apply to the disposition of “non-dwelling properties.” 24 CFR § 970.9(b)(3)(vi).

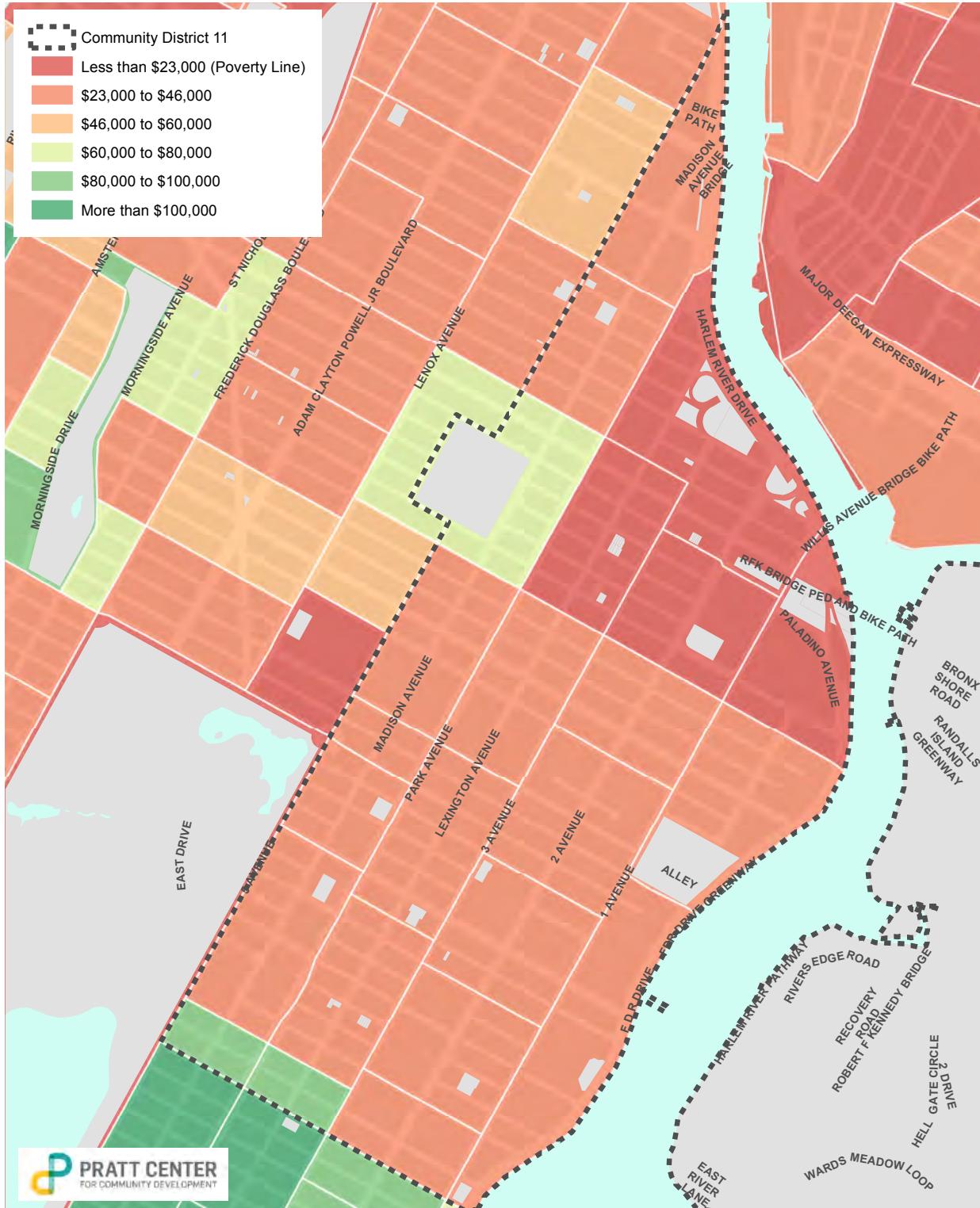
As a result, it most likely is inapplicable to the Smith Houses properties NYCHA is planning to lease for market-rate buildings.

# ZONING & LAND USE - DEMOGRAPHIC AND LAND USE ANALYSIS

Source: PLUTO 2015 and American Community Survey 5-Year Estimates 2009-2013

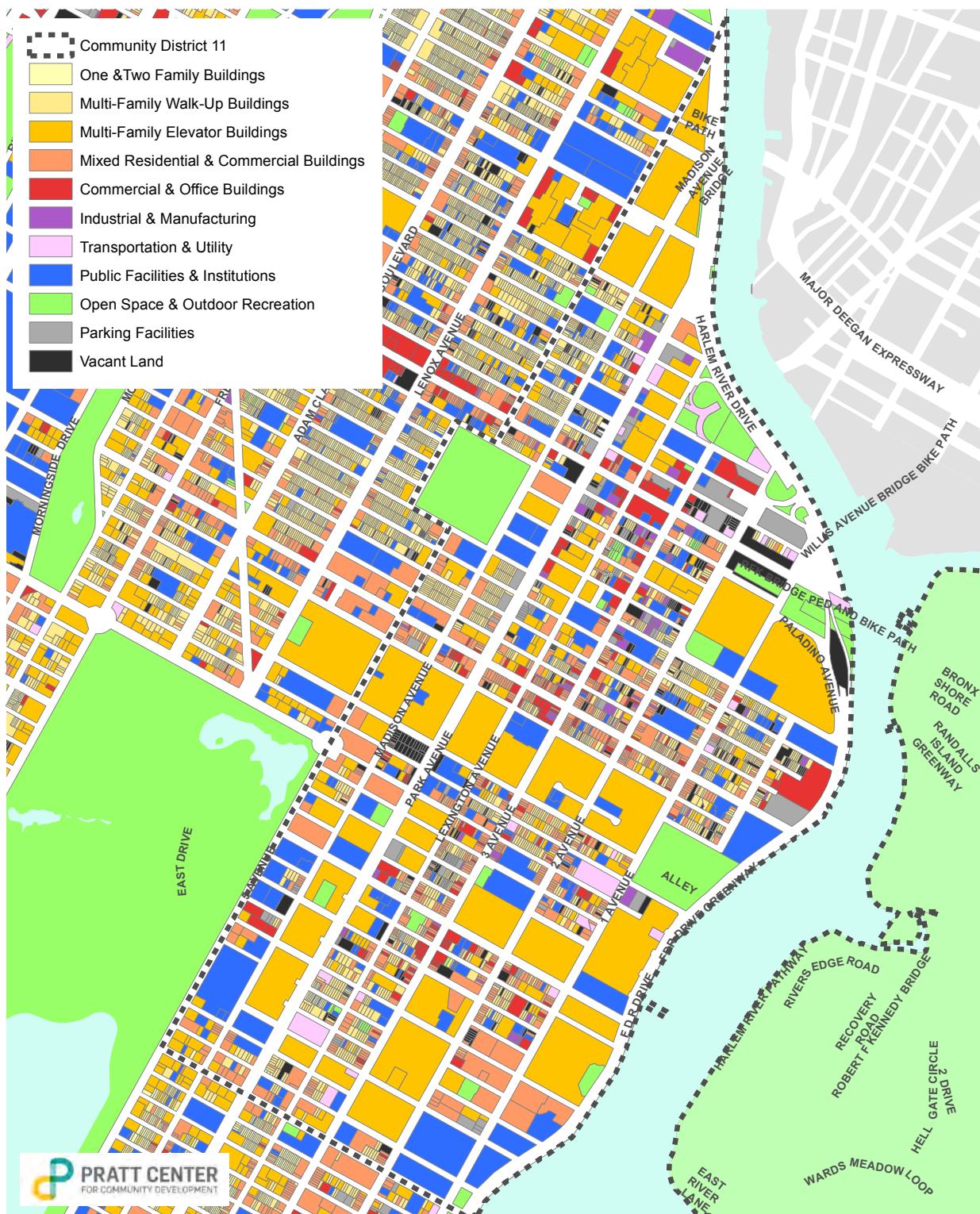
## Household Median Income (2013 inflation adjusted dollars)

Data source: American Community Survey 5 Year Estimates 2009-2013



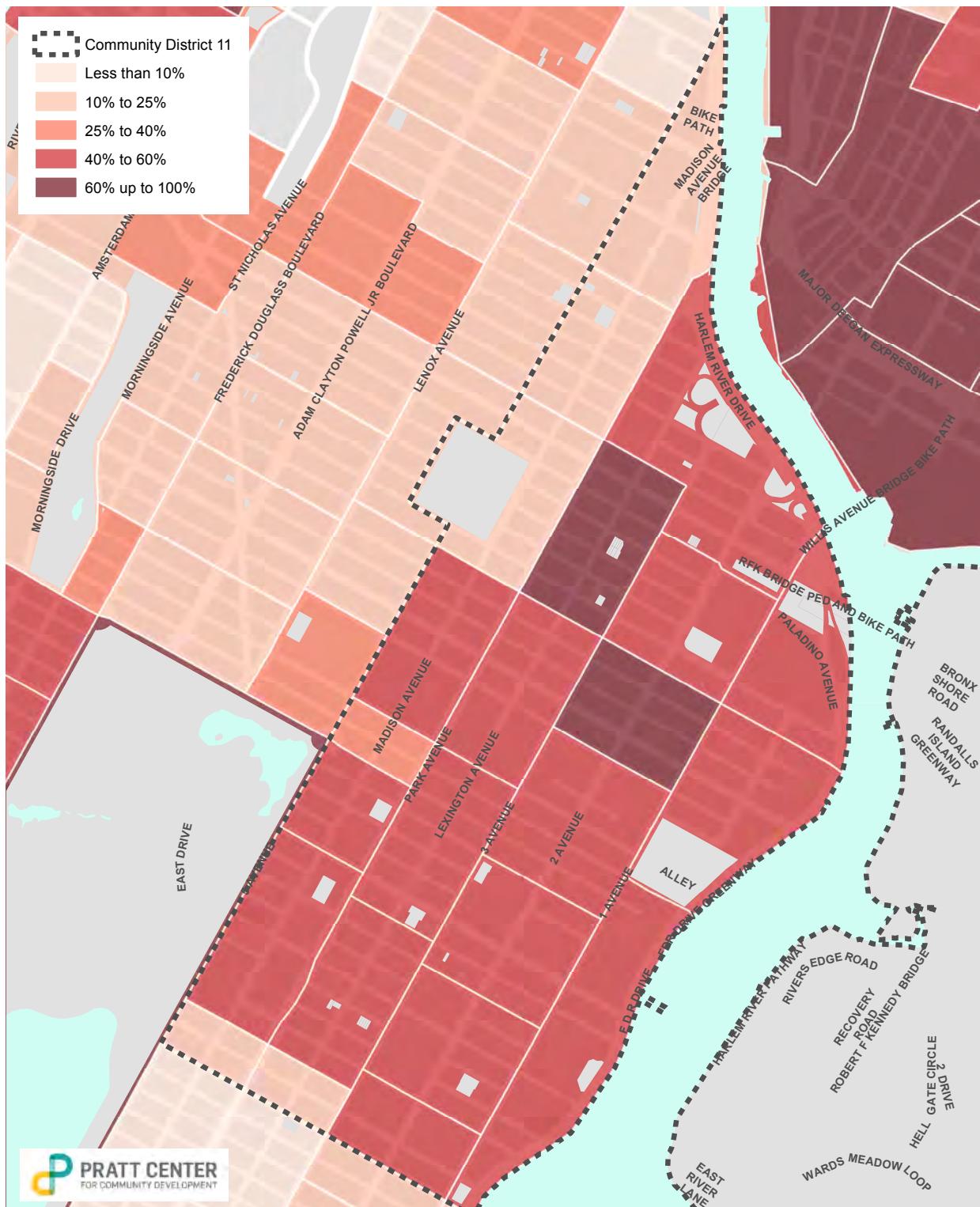
# Land Use (2014)

Data source: PLUTO 2014 (NYC Department of City Planning)



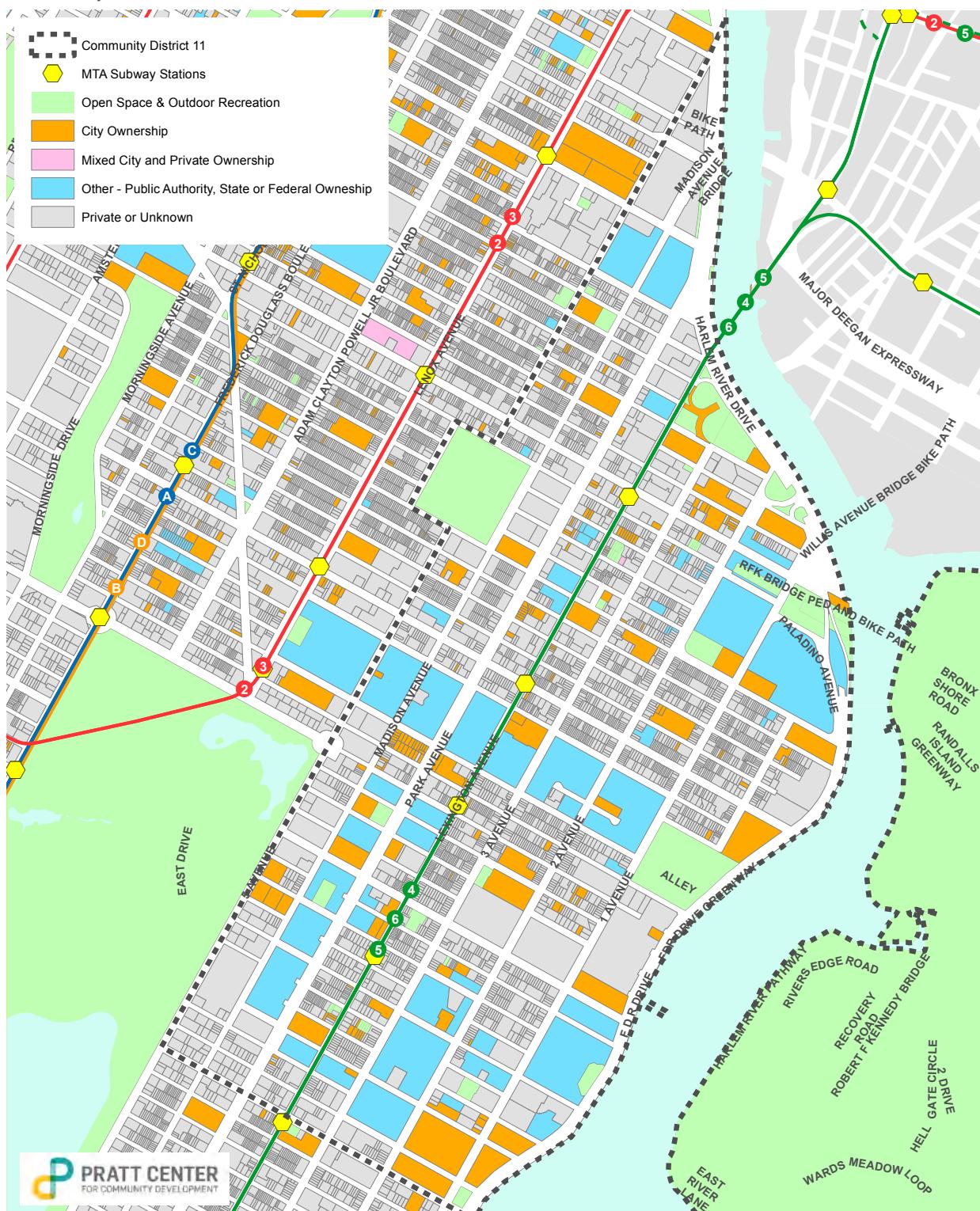
## Percentage of Hispanic/Latino Population

Data source: American Community Survey 5 Year Estimates 2009-2013



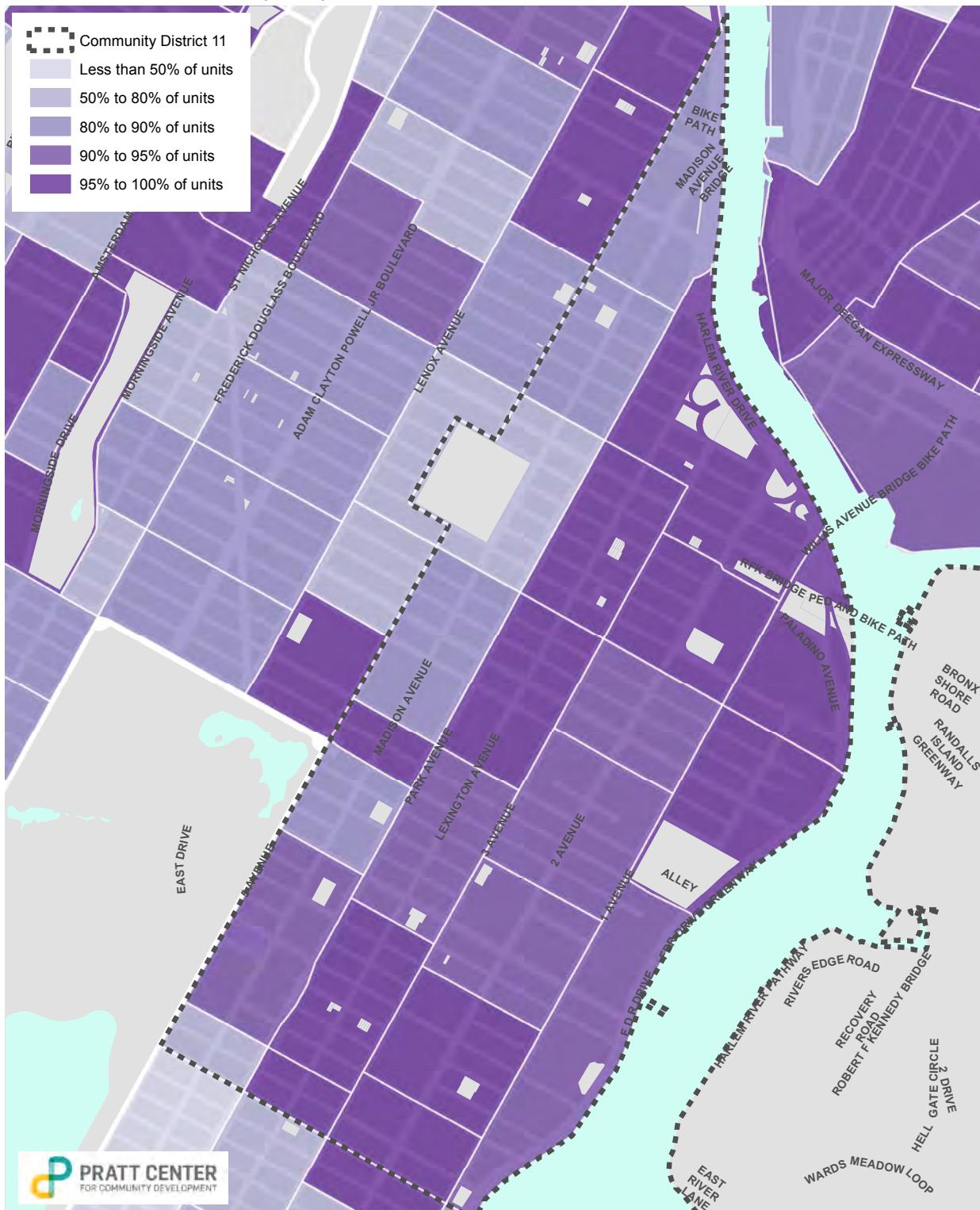
# City-Owned Land (2014)

Data source: PLUTO 2014 (NYC Department of City Planning)  
 MTA Subway Stations and Lines



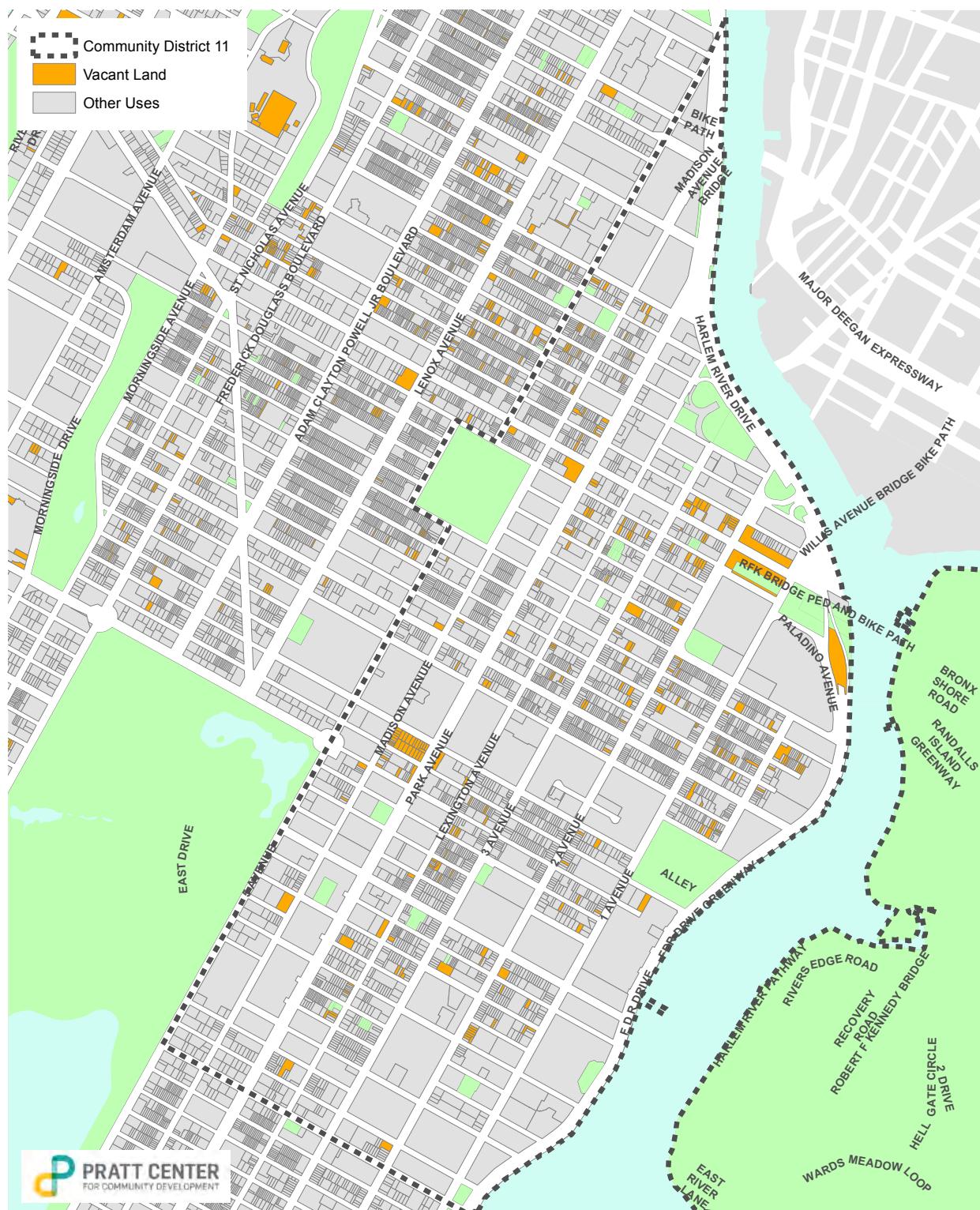
## Percentage of Renter Occupied Units

Data source: American Community Survey 5 Year Estimates 2009-2013

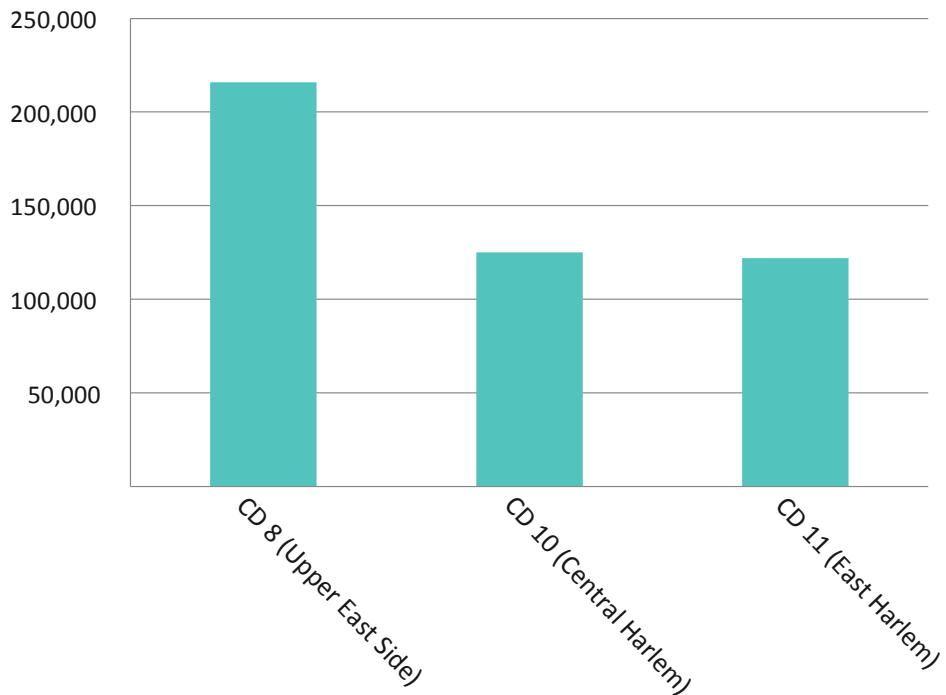


# Vacant Land (2014)

Data source: PLUTO 2014 (NYC Department of City Planning)

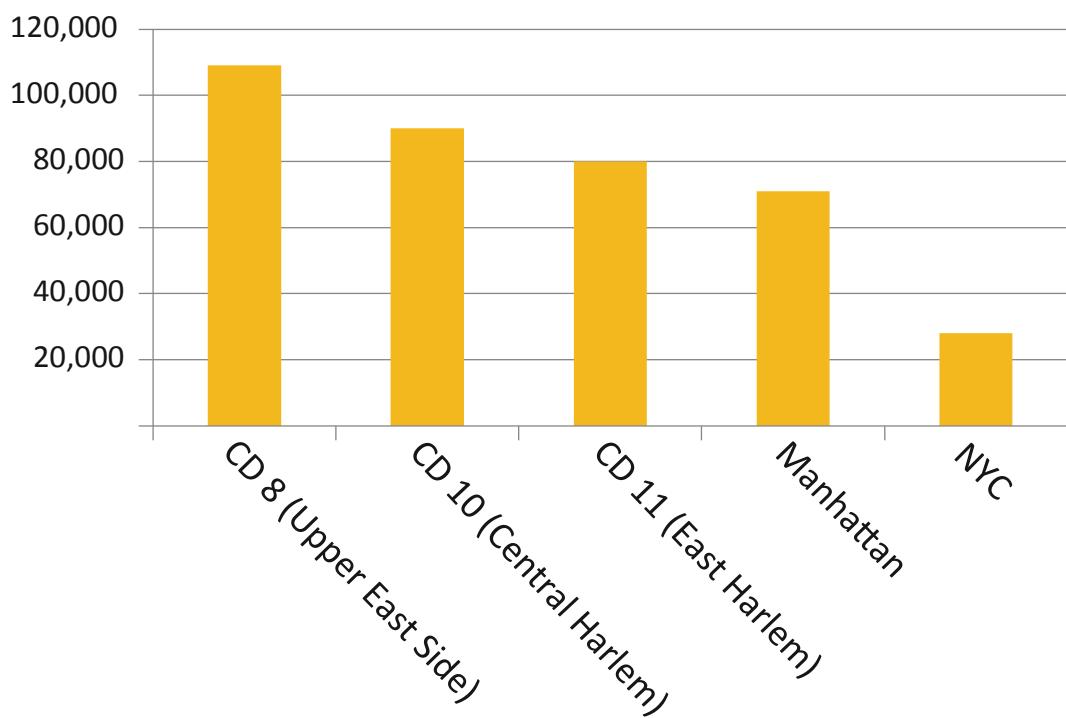


## Population

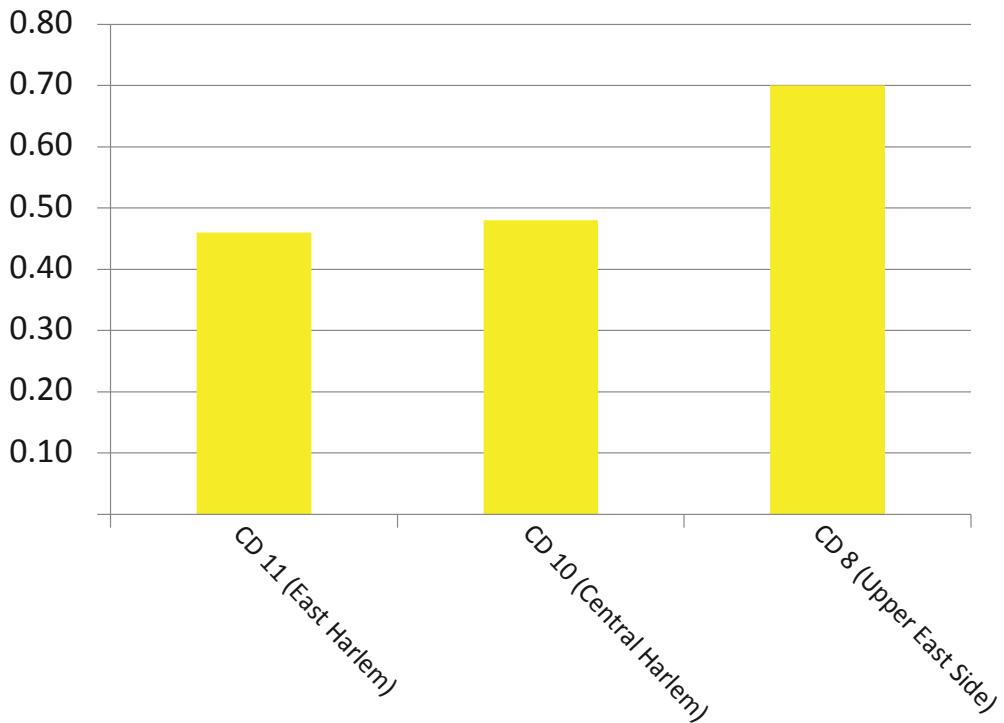


## Population Density

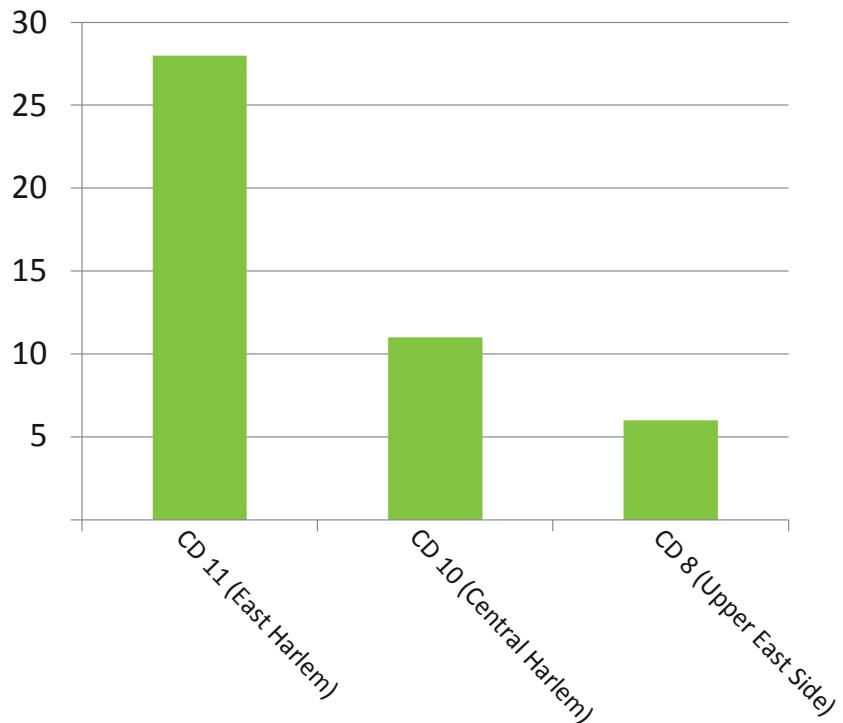
Number of People per Square Mile



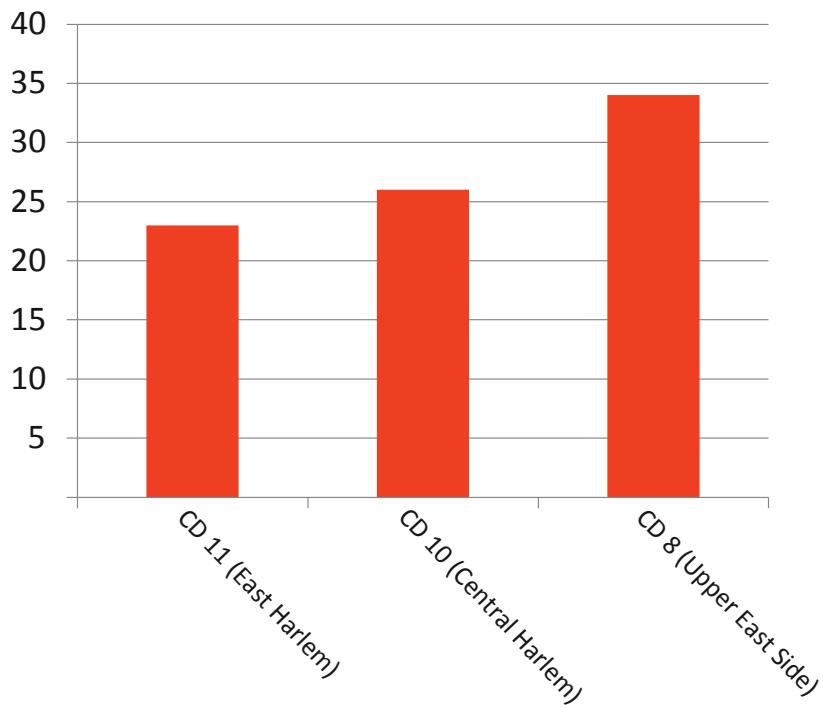
## Number of Residential Units Per Person



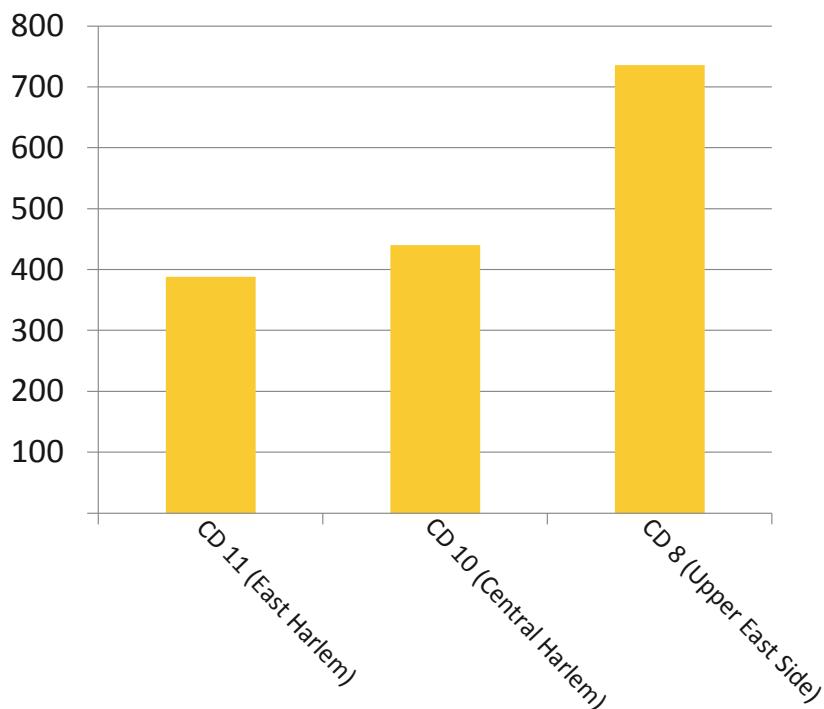
## Square Feet of Open Space Per Person



## Square Feet of Retail Per Person



## Square Feet of Residential Per Person



# TRANSPORTATION, ENVIRONMENT & ENERGY - NYCHA RESILIENCY IMPROVEMENTS

Source: NYCHA



**NEW YORK CITY HOUSING AUTHORITY**

90 CHURCH STREET • NEW YORK, NY 10007

TEL: (212) 306-3000 • <http://nyc.gov/nycha>

**SHOLA OLATOYE**  
CHAIR & CHIEF EXECUTIVE OFFICER

## Status of \$3 Billion FEMA Funding

FEMA has committed approximately \$3 billion for permanent repairs and resiliency for Sandy related damage at 35 NYCHA developments. The first step in obtaining these funds was executing letters of understanding (LOU) between FEMA and NYCHA for each development which were completed the end of July. The remaining procedural steps that must be completed before any of these funds become available are:

- NYCHA received drafts of the Project Worksheets (PW) and is currently working with FEMA to finalize.
- Each PW has to go through a set of FEMA approval queues (ie; environmental, historic preservation, insurance review before funds for that PW can be obligated. NYCHA is working with FEMA to expedite this review process.
- The funds will then be obligated to NYS Division of Homeland Security & Emergency (DHSES-Grantee).
- NYCHA (Sub-Grantee) will request DHSES release the funds to begin the work.

The FEMA funded scope of work for each development within your district is summarized in the attached. The summary pages also show the amount of FEMA funding that is currently allocated for implementation of the scope of work at that development. The actual amount may vary as a result of value engineering that will allow for maximizing the benefit of the \$3 billion funding across all Sandy impacted developments.

## Design

The permanent repair program goes well beyond the temporary repairs that have been in progress since the storm event. As such, a considerable amount of effort has to be expended in the design and planning that is required for implementation of such a construction program. NYCHA has proceeded with these efforts in parallel with the PW procedural steps to allow for the procurement and subsequent start of construction in an expeditious manner once the funds are actually available for spending. The design status of developments within your district is as follows along with the projected date when the construction work will be published for bid and start:

<b>Design Phase</b>	<b>Development</b>	<b>Estimated Qtr. of Construction</b>	
		<b>Bid Posting*</b>	<b>Start*</b>
<b>25% - 50%</b>	<b>METRO NORTH PLAZA</b>	Q4-15	Q2-16
<b>50% - 100%</b>	<b>EAST RIVER</b>	Q4-15	Q1-16

\*These are estimated dates and are subject to change

NYCHA is also planning on smaller, first phase projects in the fall of 2015 that will allow some preparatory construction work to occur in advance of the primary projects.

### **Keeping Residents Informed**

First and foremost Sandy has had a major impact on over 60,000 residents. NYCHA has instituted a robust community outreach program to keep the residents within the 35 affected developments informed about the progress of the permanent repair program and solicit input on those repairs.

These community outreach efforts are being performed out of the Sandy Program Management Office by a team that is comprised of more than 50% NYCHA residents and provides for communication in the major, non-English languages spoken in the NYCHA developments: Russian, Spanish and Chinese (Mandarin).

#### **Outreach Metrics over the Past 12 months**

<b>Development</b>	<b>Flyers</b>	<b>Phone calls</b>	<b>Meetings</b>
<b>EAST RIVER</b>	3700	770	18
<b>METRO NORTH PLAZA</b>	918	181	16
<b>Grand Total</b>	<b>4618</b>	<b>951</b>	<b>34</b>

### **Creating Jobs for Residents**

We are committed to connecting residents with jobs in our developments. Our team is currently doing outreach with Tenant Association Presidents as well as Community Based Organizations and the NYCHA- Resident Economic Empowerment Sustainability (REES) Office. We continue to flyer lobbies and phone bank residents to disseminate the information about incoming Section III jobs. Our primary objective right now is to get the residents informed, collect resumes and get residents job ready through trainings.

**NEW YORK CITY HOUSING AUTHORITY  
SANDY RECOVERY PROGRAM MANAGEMENT OFFICE**

**Sandy Recovery Program  
Permanent Repairs**

**D100**

					Districts					
Current estimated allocation necessary for FEMA scope		Residential Buildings		Apartments	Population	Acreage	Congressional	State Assembly	State Senate	City Council
EAST RIVER	\$ 76,394,000	Total #	10	1,157	2,431	11.77	13	68	30	8
Est. Construction Start*	Q1-16	# of Damaged Bldgs. funded by FEMA**	8	957	2,019					
FEMA 428 Scope										

- Restoration of play ground surface areas and play structures damaged by Sandy
- Site Restoration (sidewalks, fencing and ground fill to positive drain, etc.) of Sandy damaged areas as well as any areas that may be affected by construction
- Site Restoration - (Asphalt resurfacing) of Sandy damaged areas as well as any areas that may be affected by construction
- Abate & restore building crawl spaces at damaged buildings
- New electrical annexes to be located above the Design Flood Elevation (DFE) to house new C/T cabinets
- Full roof replacement at damaged buildings
- Repair and restore architectural features (walls, floors) of common areas damaged by flooding. Replace doors, frame & hardware damaged by flooding
- Restoration of Sandy damaged portions of mechanical, electrical and plumbing systems
- Replacement of underground conduits & site lighting (in Sandy flooded areas)
- CCTV and Layered Access Systems at damaged buildings
- Installation of stand-by generators to provide full back-up power for damaged buildings
- Installation of stairwell lighting in damaged buildings
- Dry flood proofing above DFE to protect damaged building envelope in flood prone areas
- Contents damaged as a result of Sandy (i.e. equipment and supplies)

DFE - Design Flood Elevation

\* These are estimated dates and are subject to change

\*\*The determination of whether a building was damaged by Sandy and eligible for funding was made by FEMA

**NEW YORK CITY HOUSING AUTHORITY  
SANDY RECOVERY PROGRAM MANAGEMENT OFFICE**

Sandy Recovery Program  
Permanent Repairs

D101

							Districts						
Current estimated allocation necessary for FEMA scope			Residential Buildings		Apartments		Population		Acreage	Congressional	State Assembly	State Senate	City Council
Development	\$ 39,448,000	Total #	3	271	617	2.29	13	68	29	8			
METRO NORTH PLAZA		# of Damaged Bldgs. funded by FEMA**	All Residential Buildings										
Est. Construction Start*	Q2-16	FEMA 428 Scope											
<ul style="list-style-type: none"> <li>▪ Site Restoration (sidewalks, fencing and ground fill to positive drain, etc.) of Sandy damaged areas as well as any areas that may be affected by construction</li> <li>▪ Site Restoration - (Asphalt resurfacing) of Sandy damaged areas as well as any areas that may be affected by construction</li> <li>▪ Abate &amp; restore building crawl spaces at damaged buildings</li> <li>▪ New electrical annexes to be located above the Design Flood Elevation (DFE) to house new C/T cabinets</li> <li>▪ Full roof replacement</li> <li>▪ Repair and restore architectural features (walls, floors) of common areas damaged by flooding. Replace doors, frame &amp; hardware damaged by flooding</li> <li>▪ Restoration of Sandy damaged portions of mechanical, electrical and plumbing systems</li> <li>▪ New building to house boiler equipment above the DFE</li> <li>▪ Remove underground fuel oil storage tank(s) as required.</li> <li>▪ Replacement of underground conduits &amp; site lighting (in Sandy flooded areas)</li> <li>▪ CCTV and Layered Access Systems</li> <li>▪ Installation of stand-by generators to provide full back-up power</li> <li>▪ Installation of stairwell lighting</li> <li>▪ Dry flood proofing above DFE to protect building envelope in flood prone areas</li> <li>▪ Contents damaged as a result of Sandy (i.e. equipment and supplies)</li> </ul>													

DFE - Design Flood Elevation

\* These are estimated dates and are subject to change  
\*\*The determination of whether a building was damaged by Sandy and eligible for funding was made by FEMA



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**SHOLA OLATOYE**  
 CHAIR & CHIEF EXECUTIVE OFFICER

### **Status of \$3 Billion FEMA Funding**

FEMA has committed approximately \$3 billion for permanent repairs and resiliency for Sandy related damage at 35 NYCHA developments. The first step in obtaining these funds was executing letters of understanding (LOU) between FEMA and NYCHA for each development which were completed the end of July. The remaining procedural steps that must be completed before any of these funds become available are:

- NYCHA received drafts of the Project Worksheets (PW) and is currently working with FEMA to finalize.
- Each PW has to go through a set of FEMA approval queues (ie; environmental, historic preservation, insurance review before funds for that PW can be obligated. NYCHA is working with FEMA to expedite this review process.
- The funds will then be obligated to NYS Division of Homeland Security & Emergency (DHSES-Grantee).
- NYCHA (Sub-Grantee) will request DHSES release the funds to begin the work.

The FEMA funded scope of work for each development within your district is summarized in the attached. The summary pages also show the amount of FEMA funding that is currently allocated for implementation of the scope of work at that development. The actual amount may vary as a result of value engineering that will allow for maximizing the benefit of the \$3 billion funding across all Sandy impacted developments.

### **Design**

The permanent repair program goes well beyond the temporary repairs that have been in progress since the storm event. As such, a considerable amount of effort has to be expended in the design and planning that is required for implementation of such a construction program. NYCHA has proceeded with these efforts in parallel with the PW procedural steps to allow for the procurement and subsequent start of construction in an expeditious manner once the funds are actually available for spending. The design status of developments within your district is as follows along with the projected date when the construction work will be published for bid and start:

<b>Design Phase</b>	<b>Development</b>	<b>Estimated Qtr. of Construction</b>	
		<b>Bid Posting*</b>	<b>Start*</b>
<b>0 - 25%</b>	<b>CONEY ISLAND I (SITE 8) OCEAN BAY APARTMENTS (BAYSIDE)</b>	<b>Q1-16</b>	<b>Q2-16</b>
	<b>O'DWYER GARDENS</b>	<b>Q1-16</b>	<b>Q2-16</b>
	<b>RED HOOK EAST</b>	<b>Q1-16</b>	<b>Q2-16</b>
	<b>RED HOOK WEST</b>	<b>Q1-16</b>	<b>Q2-16</b>
	<b>SURFSIDE GARDENS</b>	<b>Q1-16</b>	<b>Q2-16</b>
<b>25% - 50%</b>	<b>LA GUARDIA</b>	<b>Q1-16</b>	<b>Q2-16</b>
	<b>METRO NORTH PLAZA</b>	<b>Q4-15</b>	<b>Q2-16</b>
	<b>TWO BRIDGES URA (SITE 7)</b>	<b>Q1-16</b>	<b>Q2-16</b>
<b>50% - 100%</b>	<b>BARUCH</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>BEACH 41ST STREET-BEACH</b>		
	<b>CHANNEL DRIVE</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>CAMPOS PLAZA II</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>CAREY GARDENS</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>CARLETON MANOR</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>CONEY ISLAND</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>CONEY ISLAND I (SITES 4 &amp; 5)</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>EAST RIVER</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>GOWANUS</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>GRAVESEND</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>HABER</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>HAMMEL</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>ISAACS</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>LAVANBURG HOMES</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>RANGEL</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>REDFERN</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>RIIS</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>RIIS II</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>WALD</b>	<b>Q4-15</b>	<b>Q1-16</b>
<b>Preparation of Bid Packages</b>	<b>ASTORIA</b>	<b>Q3-15</b>	<b>Q4-15</b>
	<b>CONEY ISLAND I (SITE 1B)</b>	<b>Q4-15</b>	<b>Q1-16</b>
	<b>OCEAN BAY APARTMENTS (OCEANSIDE)</b>	<b>Q3-15</b>	<b>Q4-15</b>
	<b>SMITH</b>	<b>Q3-15</b>	<b>Q4-15</b>
<b>In Construction</b>	<b>LOWER EAST SIDE (REHAB V)</b>	<b>Q4-14</b>	<b>Q3-15</b>

\*These are estimated dates and are subject to change.

NYCHA is also planning on smaller, early start projects in the fall of 2015 that will allow some preparatory construction work to occur in advance of the primary projects.

## Keeping Residents Informed

First and foremost Sandy has had a major impact on over 60,000 residents. NYCHA has instituted a robust community outreach program to keep the residents within the 35 affected developments informed about the progress of the permanent repair program and solicit input on those repairs.

These community outreach efforts are being performed out of the Sandy Program Management Office by a team that is comprised of more than 50% NYCHA residents and provides for communication in the major, non-English languages spoken in the NYCHA developments: Russian, Spanish and Chinese (Mandarin).

**Outreach Metrics over the Past 12 months**

<b>Development</b>	<b>Flyers</b>	<b>Phone calls</b>	<b>Meetings</b>
ASTORIA	1350	21	39
BARUCH	7950	1274	44
BEACH 41ST	1824	687	21
CAMPOS PLAZA II	250	100	7
CAREY GARDENS	700	36	23
CARLETON MANOR	300	49	71
CONEY ISLAND HOUSES	600	1062	35
CONEY ISLAND I (SITE 1B)	100	38	42
CONEY ISLAND I (SITE 8)	400	36	27
CONEY ISLAND I (SITES 4 & 5)	950	768	22
EAST RIVER	3700	770	18
GOWANUS	3650	1125	46
GRAVESEND	1650	628	33
HABER	100	50	13
HAMMEL	950	48	70
ISAACS	985	50	10
LA GUARDIA	1600	889	10
LAVANBURG	N/A	29	7
LOWER EAST SIDE (REHAB V)	450	116	4
METRO NORTH	918	181	16
OCEAN BAY APARTMENTS (BAYSIDE)	850	202	8
OCEAN BAY APARTMENTS (OCEANSIDE)	4750	637	49
O'DWYER GARDENS	1250	535	26
RANGEL	2550	640	49
RED HOOK EAST	2350	745	15
RED HOOK WEST	7950	2083	38
REDFERN	4750	471	37
RIIS I	950	235	39
RIIS II	2250	600	15
SMITH	2125	600	15
SURFSIDE GARDENS	4266	1600	49
TWO BRIDGES URA (SITE 7)	324	2340	73
WALD	500	258	38
<b>Grand Total</b>	<b>67842</b>	<b>20039</b>	<b>1047</b>

**Creating Jobs for Residents**

We are committed to connecting residents with jobs in our developments. Our team is currently doing outreach with Tenant Association Presidents as well as Community Based Organizations and the NYCHA- Resident Economic Empowerment Sustainability (REES) Office. We continue to flyer lobbies and phone bank residents to disseminate the information about incoming Section III jobs. Our primary objective right now is to get the residents informed, collect resumes and get residents job ready through trainings.

## **SAFETY – EXECUTIVE SUMMARY OF *IMPROVING POLICE-COMMUNITY RELATIONS***

Source: Website of Manhattan Borough President Gale A. Brewer - <http://manhattanbp.nyc.gov/downloads/pdf/NYPD%20Town%20Hall%20Report.pdf>

# **IMPROVING POLICE-COMMUNITY RELATIONS**

A Report from a Series of  
Town Hall Meetings in Brooklyn and Manhattan

A Joint Project of the Offices of  
Brooklyn Borough President Eric L. Adams  
and Manhattan Borough President Gale A. Brewer  
and Civil Rights Attorney Norman Siegel

# **2015**



## 2. Executive Summary

In Black and Latino neighborhoods of New York, being treated differently and often unfairly because of one's racial identity is both a historical fact and contemporary reality. In recent years, various forms of racial discrimination in policing became systemic in the NYPD, and it took the Federal Courts to put a stop to some of it. The testimony of over a thousand New Yorkers at our town halls and digital dialogues in Brooklyn and Manhattan over the past six months revealed a legacy of individual and communal harm caused by racial hostility in the NYPD's policing of communities of color. As the testimony compiled in the report shows, that harm is deep and permanent. However, we also found that these negative encounters are accompanied by an openness to work with the Department to repair the relationship and to create a new, collaborative framework in which communities of color will be policed effectively, respectfully, and without bias.

The tenor of the testimony we heard points to the hyphen that divides "police-community" relations – it has never signified a relationship of equals. Law enforcement has historically understood "community policing" as a toolbox of techniques to be imposed and controlled by the police, and in which their authority was not to be shared or questioned. In practice, there has been little focus on the "community" side of the hyphen. One of the most important findings from the town halls – and a key signal to the Department – is that the residents of our city want genuine community-based policing. But unless the Department's latest reforms ensure that the "neighborhood policing" strategy is collaborative, the community and the NYPD are going to spend another generation as strangers divided by fear and hostility.

On the subject of how to collaborate, clear ideas emerged from the town halls:

1. "Neighborhood policing" as proposed by Commissioner William Bratton will not succeed in improving police-community relations in communities of color, nor keep crime rates low, unless it is developed and deployed in partnership with neighborhood residents. They expect to have a strong, respected, permanent role in designing how their community is policed.
2. There must be reform of the NYPD's policing policies and practices, including an end to racial profiling, stereotyping, harassment, and unlawful "stop and frisks." Trust and cooperation will be difficult to restore unless the department's *culture* of policing is reformed as well as its tactics.



3. The community is prepared to believe that most of the NYPD rank and file is much better than the profiling of recent years might suggest, and that while some wrongs were done due to genuine animus, most were committed under the aegis of a police culture that sanctioned the abuse of lawful authority. It remains to be seen if the community's hopes for fairness and professionalism will be fulfilled through policing reforms.

In addition to their clear understanding of how to make policing collaborative, community members strongly affirmed their support for systemic and institutional reforms:

*A. Criminal Justice*

1. Ensure that the language in the NYPD Patrol Guide and training material that guides officers on how to conform to the law while conducting a “stop and frisk” based on “reasonable suspicion” follows the standard established by the Supreme Court of the United States in *Terry v. Ohio* 392 U.S. (1968).
2. Establish a permanent Statewide Independent Special Prosecutor to investigate allegations of police misconduct.
3. Establish a program of Independent Evidence Gatherers. When individuals are killed or severely injured at the hands of police officers, all evidence at the scene should be gathered by investigators who are independent of the police. This will ensure that any evidence collected is handled appropriately, and maintained neutrally, so it can be used to guarantee fairness throughout the rest of the criminal justice process.
4. Abolish or reform the current grand jury system.
5. Reform the Civilian Complaint Review Board to increase the respect and trust in which it is held by the public and those whose complaints of police misconduct it investigates.

*B. Policing*

1. Implement a new NYPD Diversity Plan: “Experience Equals Education.” New York City’s peace officer forces such as School Safety Agents, Traffic Enforcement Agents, and Health and Hospital Corporation Officers are more diverse than the NYPD as a whole, yet they are not allowed to take the NYPD exam unless they have two years of college. We propose to allow



these and other peace officers to take the NYPD exam if they have served honorably for more than two years in their current positions.

2. Train NYPD Officers as Community Affairs Officers. All NYPD Officers should receive basic training in Community Affairs policing and be engaged in outreach to communities for citywide programs like “Pre-K for All” and “ID-NYC.”
3. Increase Police Academy training from six months to one year.
4. Create a Mayoral task force to review NYPD training material and procedures every three years.
5. Modify training to enhance skills in the de-escalation of conflict.
6. Offer incentives so that officers can live in the communities they police, or anywhere in New York City.
7. Recognize that policing is a high-stress occupation and allow officers to take sabbaticals.
8. Expand foot patrol operations in high crime areas, particularly New York City Housing Authority (NYCHA) developments.
9. Reform “Broken Windows” policing by decriminalizing many non-threatening behaviors.
10. Have officers wear body cameras once proper protocols are in place.

*C. Community-Based Initiatives*

1. Open School Space for Community Purposes: Our schools are too often left empty after the school day ends, yet that is when space is needed for community sports, arts, and civic activities. NYPD should partner with the Department of Education (DOE) to expand school building hours to create safe spaces for community activities.
2. Open Precincts for Community Purposes: Our precincts are often places community members only experience when interacting with the criminal justice system. The NYPD should make a concerted effort to make precincts more welcoming to the community. It should be a place they want to go because they will be treated respectfully and be given information.



3. Community Ownership and Accountability: To improve the quality of “neighborhood policing” and make neighborhoods safer, communities should take a stronger leadership role.

- a. Evolve beyond the “snitching mentality.” Become responsible for “saying something if you see something” suspicious or dangerous in the neighborhood; tell someone you trust, such as a local leader or member of the clergy.
- b. Get involved: raise your voice at Police Precinct Council meetings and volunteer your time with local organizations;
- c. Partner with NYPD: enroll your children in the NYPD Explorers Program, advocate for more Police Athletic League funding, and get involved in the annual “National Night Out” events at your local precinct.

4. Community Involvement: Establish and expand NYPD outreach programs with schools, religious institutions, community-based organizations, NYCHA developments, and other venues.

*D. Oversight*

1. Require an annual police-community relations status report published by the NYPD.
2. Hold an annual police-community relations town hall forum to occur during the same week annually in each of the five boroughs.

The testimony that informs the findings of this report, and from which many of these recommendations were drawn, is not comprehensive. It captures the voices of everyday New Yorkers and members of the NYPD in communities from Brooklyn to Manhattan at a time of historic turmoil over race, policing, and public safety. In this respect, the town halls reflect the racial and moral health of the city’s policing practices, but also that of the community. New Yorkers of every neighborhood, race, ethnic group, and class want effective policing and safe communities; they want fair, respectful, unbiased treatment by the police, as well as of the police by the community; and they want officers who are accountable not only to the police unions and One Police Plaza, but to the residents. We offer this report to all those who would join us in pursuing these goals, in fostering a renewal of trust, creating safe neighborhoods, and ensuring that we have a justice system, from the streets to the courts, in which everyone is truly equal under the law.

## SELECTED SPATIAL DATABASES USED IN ANALYSIS

1. **Schoolyards to playgrounds** – This spatial database provides a list of participating schoolyards to playground locations. It was provided by the Department of Parks and Recreation to the New York City Council Speaker's Office.
2. **Manhattan CD 11 subsidized properties** – This spatial database is from the Furman Center's Subsidized Housing Information Project (SHIP), and it provides key information on subsidized housing in East Harlem. "Affordable Housing Loss Analysis" in Appendix A contains a full description of affordable housing databases and how they were used in the EHNP.
3. **Rent stabilization changes** – This spatial database merges multiple datasets to produce a detailed picture of rent stabilized housing units in East Harlem. "Affordable Housing Loss Analysis" in Appendix A contains a full description of affordable housing databases and how they were used in the EHNP.
4. **Profiles of Manhattan CD 8, 10, and 11** – This spatial database provides key demographic and land use information for three Manhattan Community Districts. The profiles were assembled by Hester Street Collaborative using PLUTO 2015 data.
5. **Citybench locations** – This spatial database provided us with the location of all Citybenches in CB 11 / East Harlem. This data is available to the public online via NYC Open Data: <https://data.cityofnewyork.us/Transportation/City-Bench-Locations/8d5p-rji6>

**EAST**  
**HARLEM**  
*Neighborhood*  
**PLAN**