



Testimony of the New York City Community Land Initiative (NYCCLI) before the NYC Council Committee on Finance, regarding Intro 1385-A, amending the NYC Charter and Administrative Code in relation to the tax lien sale

January 11, 2017

Good afternoon, and thank you Committee Chair Ferreras-Copeland and the other members of the Committee for the opportunity to comment on Intro 1385-A, which would reauthorize NYC's tax lien sale. My name is John Krinsky, and I am a founding board member of the New York City Community Land Initiative (NYCCLI), an alliance of affordable housing and social justice organizations that advocates for community land trusts (CLTs) as a mechanism to create deeply and permanently affordable, community-controlled housing.

Collectively, NYCCLI's two dozen member organizations have decades of experiences working with property owners and communities harmed by NYC's 20-year-old tax lien sale. We have seen the tax lien sale contribute to the destabilization of NYC neighborhoods – particularly low-income neighborhoods and communities of color – by fueling speculation and deregulation of affordable housing, loss of nonprofit and community spaces, and warehousing of valuable vacant and neglected land and buildings. On the other hand, the 2015 tax lien sale generated about \$72 million, or about 3 percent of the City's total tax levy.

NYCCLI opposes Intro 1385-A as currently drafted, and makes specific recommendations to improve the bill. We believe that it is in the City's interest to use its leverage over tax indebted properties to create and preserve permanently affordable housing and other vital community resources. Currently, the lien sale contributes to the loss of vital affordable housing and property that could be developed as such, and favors private investors over the public good. If the City reauthorizes the tax lien sale, it should adopt the changes described herein to transform the tax

lien sale into a means for long-term preservation and neighborhood stabilization. We also urge the Council to enact legislation to establish a non-profit “preservation trust” that could purchase tax liens on distressed properties as a means of preserving affordable housing, as discussed further below.

Our recommendations to Intro 1385-A are as follows:

(1) Expand the definition of distressed multifamily properties exempted from the tax lien sale, so that more properties can be guided onto pathways for long-term affordable preservation.

Specifically, the City should expand the definition of “distressed” multifamily properties to include buildings with a lien-to-value ratio of 10 percent or more; three or more B and C violations for Class 2 buildings; and buildings that have entered the tax lien sale multiple times. The current narrow exemptions for multifamily properties mean that many buildings, already in poor condition, deteriorate further as owners face quickly escalating debts and neglect repairs. In fact, 70 percent of multifamily buildings in the lien sale have been in the lien sale at least once before. In addition, 36 percent of buildings become *more* distressed one year after the sale (using the UNHP BIP score of building distress).

(2) Automatically exempt liens on property owned by not-for-profit organizations eligible for NYS Real Property Tax Law 420-a tax exemptions, whether or not they have submitted an application for property tax exemption.

By failing to automatically exempt nonprofit-owned property, Intro 1385-A would perpetuate the tax lien sale’s effect of undermining organizations upon which so many low-income New Yorkers rely, such as churches, day care centers, community gardens, and community centers. A mandatory property tax exemption applies to these owners under New York State law, but the City has chosen to ignore it. Instead, the City’s onerous requirement of requiring nonprofits to recertify every year leaves those organizations with the least administrative capacity at risk of missing notices about the sale. We urge the Council to acknowledge the importance of these critical neighborhood spaces by automatically exempting non-profit-owned property owners from the sale.

(3) Exempt HDFC rentals from the lien sale.

Currently, HDFC cooperatives are exempt from the lien sale, but HDFC rentals are not. These properties are run as not-for-profit housing for low-income residents, even if they do not have formal nonprofit status. Like HDFC cooperatives, they are valuable affordable housing resources that should not be put in danger by the lien sale.

(4) Automatically exempt liens on vacant land and unoccupied buildings, and move them into affordable redevelopment programs where possible; determine which properties are already used as community spaces and preserve them as such.

Intro 1385-A fails to exempt vacant land, a precious City resource, allowing potential sites for deeply affordable residential or commercial properties to sit neglected and debt-encumbered for years. These properties – over 650 lots in 2015 – represent an enormous opportunity for both affordable housing development and the amelioration of substantial health and safety risks for local residents. The City cannot claim that it has no land on which to build affordable housing, all the while overlooking and squandering this important development opportunity. For these reasons, we urge the Council to automatically exempt vacant land and buildings from the tax lien sale and re-route vacant properties into appropriate preservation pipelines. The bill promises four more years of disappearing community centers, languishing vacant lots and landlord neglect; the tax lien sale should not be reauthorized for even a year more without the above changes.

In addition to the above changes to Intro 1385-A, we urge the Council to pursue policies to recoup unpaid taxes in ways that support community stability and preserve affordable rental and home-ownership opportunities. For example, the Council should enact legislation to establish a nonprofit “preservation trust” that could purchase certain tax liens on distressed properties. A preservation trust could work with HPD and property owners to keep housing affordable, through regulatory agreements linked to payment plans and debt subordination agreements. Where this was not feasible, the preservation trust could foreclose on the properties and transfer ownership to nonprofit, community-based and -controlled housing groups such as CDCs, mutual housing associations, and community land trusts, which are mission-driven to keep housing permanently affordable.

The above strategy depends, however, on Intro 1385-A expanding the definition of “distressed” in order to automatically exempt a wider pool of multifamily properties from the lien sale and divert those properties to a preservation pipeline. If the tax lien sale program must be reauthorized at all before a not-for-profit preservation trust is ready to purchase debt from the City, we urge that the bill be amended to limit the time of the authorization to a single year.

I am providing with my written testimony a two-pager with further background on the tax lien sale. NYCCLI welcomes the opportunity to further discuss our concerns and recommendations with the Council. Thank you.

NYC's Tax Lien Sale: A Missed Opportunity to Preserve and Stabilize Affordable Housing

Recommendations re: Intro 1385-A

**NYC Community Land Initiative | Mutual Housing Association of NY | Community Development Project of the
Urban Justice Center | 596 Acres, Inc. | New Economy Project
Urban Homesteading Assistance Board**

NYC's Tax Lien Sale destabilizes neighborhoods by fueling speculation and deregulation of affordable housing, loss of not-for-profit and community spaces, and warehousing of valuable vacant and neglected land and buildings. Our organizations have decades of experience working with property owners and communities harmed by the tax lien sale. We call on the NYC Council to amend the tax lien sale reauthorization bill, Intro 1385-A, as described herein, and to enact legislation to establish a preservation trust that could purchase tax liens on distressed properties as a means of preserving affordable housing. Without these critical changes, we urge members to vote NO on Intro 1385-A.

BACKGROUND

What is the NYC Property Tax Lien Sale?

Each year, NYC's Department of Finance sells off unpaid property tax, water/sewer, and other liens in bulk at a discount to a private bank-controlled trust. The trust then owns and collects on these debts, charging property owners 9 to 18 percent interest, compounded daily, and unlimited legal fees. If property owners do not pay, the trust can initiate foreclosure proceedings. The tax lien sale was created in 1996 by the NYC Council and Mayor Giuliani to replace the City's system of taking delinquent properties through *in rem* foreclosure. Under Mayor Giuliani, the City discontinued its commitment to using the *in rem* process to preserve affordable housing in conjunction with nonprofits, through programs that resulted in the creation and preservation of tens of thousands of affordable units.

Which properties does the tax lien sale cover?

Most NYC property liens are subject to the sale. These include liens on one-to-three family homes, multifamily properties, unoccupied structures and vacant lots, and commercial properties—including properties owned by not-for-profit and faith-based organizations that are statutorily exempt from property taxes under NYS law.

Which properties are exempt from the tax lien sale?

Liens on HDFC cooperatives and "distressed" multifamily properties are exempt from the sale. Distressed properties are defined as having a lien-to-value ratio of 15 percent or more and either five or more hazardous or immediately hazardous conditions under the City's Housing Maintenance Code or \$1,000 or more in Emergency Repair Program liens. Certain owners of residential condominiums and Class 1 (1-3 family) housing may apply for exemption from the lien sale, including low-income seniors, persons with disabilities, active-duty military personnel, veterans, and Gold Star parents.

What are the problems with the tax lien sale?

NYC's lien sale takes a largely one-size-fits-all approach to tax delinquency, forfeiting the City's leverage over crucial affordable housing resources and disproportionately harming low-income New Yorkers and communities of color. The narrow exemptions for multifamily properties mean that many buildings, already in poor condition, deteriorate further as owners face quickly escalating debts and neglect repairs. Elderly and infirm homeowners often do not receive or understand the City's notice of intent to sell their tax liens, and many low-income owners cannot afford the limited payment plan options. Not-for-profit organizations are forced to sell or risk losing their properties to foreclosure, or use charity funds to pay fees and taxes they should not owe. Vacant lots with absentee owners languish for years after the sale

and become further neglected. Many properties, in fact, enter the tax lien sale for multiple years, as debts on these properties pile up so high that they can never be reclaimed for affordable community uses.

What are the problems with Intro 1385-A?

Intro 1385-A would reauthorize NYC's lien sale for four years and mainly preserve the status quo. The bill specifies payment plans and installment agreements that can lead a property out of the lien sale, as well as preferred—but not mandatory—notice strategies. Intro 1385-A would do nothing to protect existing affordable housing from the risks of the lien sale and subsequent speculation, nor would it use the City's leverage over delinquent properties as a mechanism to create or preserve affordable housing. Vacant property liens would remain in the sale. The bill fails to provide an automatic exemption for not-for-profit owners; if it becomes law, communities would continue to lose churches, food pantries, and community centers as a result of the lien sale.

NYC's current tax lien sale policy represents a missed opportunity to preserve and stabilize affordable housing and other valuable community spaces. Our organizations call on NYC to make the following changes to Intro 1385-A and to enact legislation to establish a preservation trust.

RECOMMENDED CHANGES TO NYC'S LIEN SALE

We call on NYC Council to amend Intro 1385-A to:

- **Expand the definition of distressed multifamily properties** exempted from the lien sale, so these properties can be guided onto pathways for long-term affordable preservation. "Distressed" multifamily properties should include buildings with a lien-to-value ratio of 10 percent or more; three or more B and C violations for Class 2 buildings; and buildings that have entered the lien sale multiple times.
- **Include stronger notification requirements** to ensure that NYC notifies property owners via phone, email, and posted listing before a lien is sold.
- **Automatically exempt liens on property owned by not-for-profit organizations** eligible for NYS Real Property Tax Law 420-a tax exemptions, whether or not they have submitted an application for property tax exemption or not.
- **Automatically exempt liens on vacant land and unoccupied buildings**, and move them into affordable redevelopment programs where possible; determine which properties are already used as community spaces and can be preserved as such.
- **Impose post-sale limits on legal fees** that the trust may charge property owners.
- **Establish affordable income-based payment plans** for low-income homeowners.

ESTABLISH A PRESERVATION TRUST

Adopt legislation to establish a preservation trust to purchase tax liens on distressed properties in order to preserve them as affordable housing, more expeditiously than the City currently does for distressed properties. It is important to make this City *law*, rather than leave determination of exemptions, *in rem* foreclosure, and disposition to the discretion of the Department of Housing Preservation and Development. The preservation trust would, for example, work with HPD and current property owners to ensure the preservation of affordable housing (e.g., through subordination of the debt in exchange for regulatory agreements) or, where foreclosure becomes necessary, transfer properties to new preservation-minded owners such as nonprofit community development corporations, mutual housing associations, and community land trusts. These models, in particular, can help make preservation for affordable housing and other community uses more viable through geographic clustering and economies of scale.

Prepared on January 9, 2017