

# NYC community land initiative



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

## **Testimony before the New York City Council Committee on Housing and Buildings and the Committee on Land Use**

### **Oversight Hearing – Building Homes, Preserving Communities: A First Look at the Mayor’s Affordable Housing Plan**

**November 17, 2014**

Good morning, and thank you for inviting me to testify today. My name is Claudia Wilner, and I am Senior Staff Attorney at the New Economy Project. I am here today on behalf of the New York City Community Land Initiative, an alliance of social justice and affordable housing organizations, academics, and urban planners committed to preserving and creating housing for all New Yorkers—especially those who are homeless or have extremely low incomes. Our alliance sees Community Land Trusts (CLTs) as a promising tool in the fight to address the root causes of homelessness and displacement. We engage in education, outreach, and policy reform to promote the development of CLTs, and we have recently established the East Harlem/El Barrio Community Land Trust, which will serve as a pilot for CLTs citywide.

As everyone knows, we have a housing crisis in New York City. So-called “affordable” housing is not, in fact, affordable to huge numbers of New Yorkers, including people who are homeless, low-wage workers, or living on fixed incomes such as Social Security. Expiring subsidies are threatening the homes of many currently-housed low-income New Yorkers.

The Mayor has proposed a sweeping plan to address the crisis by preserving or building 200,000 units of affordable housing over the next ten years. The plan has many appealing elements, but it also contains some troubling deficiencies that threaten to undermine its overarching goals.

First, although the plan recognizes that the most severe housing shortages occur amongst those New Yorkers earning less than 50% of the Area Median Income (AMI), it falls short when it comes to creating and preserving housing for those very low and extremely low income households. According to the Mayor’s own numbers, 500,000 of the lowest income earners in New York are paying more for housing than they can afford, and another 50,000 are homeless. Yet, the plan proposes to preserve or create only 24,000 affordable units (or 12% of units created) for very low income households (less than 50% of AMI), and only 16,000 affordable units (or 8% of units created) for extremely low income households (less than 30% of AMI). Furthermore, the plan contains no specific steps for accomplishing this goal. This is grossly inadequate, particularly since the communities that most directly bear the brunt of gentrification

and displacement have much higher concentrations of very low and extremely low income households.

Second, while the City appears ready to invest a substantial amount of money to create new affordable housing, its plan lacks mechanisms to ensure that housing created through city investment will remain affordable for the long-term. The City shouldn't waste precious public resources by investing in subsidies that are scheduled to expire. As an example of the harmful effect of shortsighted policies such as expiration dates, consider the devastating loss of affordable housing in Mitchell-Lama buildings around the City.

Third, it appears as if the City seeks to address some of its affordable development goals by means of mandatory inclusionary zoning. While mandatory inclusionary zoning can be an important step, rezoning can prompt speculation with respect to land and housing, leading to tenant harassment, displacement, and the loss of affordable housing. During the last ten years, the City lost more than 400,000 units of affordable housing, and under the New Housing Marketplace Program, replaced less than half of them—leading to a net loss of housing for nearly one million New Yorkers. The City cannot afford to repeat this disastrous mistake. If the City is going to use mandatory inclusionary zoning as a policy to create affordable housing, the City must ensure that re-zoning does not lead to a net loss of affordable housing.

Community Land Trusts can help address these deficiencies by: (1) creating and preserving housing that is truly affordable to the lowest income New Yorkers; (2) ensuring that housing created on CLT land will remain permanently affordable; and (3) enabling more comprehensive land-use planning on a neighborhood basis. Because of these benefits that the CLT model offers, the City should be doing as much as it possibly can to support the creation and development of CLTs.

Community land trusts separate ownership of land from ownership of what is built on the land. A nonprofit entity—the land trust—owns the land and leases its use to organizations, businesses, and individuals, usually for affordable housing. Most CLTs are governed by a board consisting of 1/3 residents of housing on CLT land, 1/3 community members, and 1/3 external stakeholders, such as government representatives, advocates, and housing professionals. The entire mission of the CLT is stewardship: to maintain for future generations the quality and affordability of housing and other community-serving uses on CLT land, using the ground lease as an enforcement mechanism. By permanently removing land from the private market, the CLT structure eliminates much of the speculation, profit-seeking, and gentrification pressure that drives the increase in housing costs.

For housing, which is the subject of our hearing today, things really get promising when CLTs partner with non-speculative housing providers, such as mutual housing associations. In the mutual housing model, multiple scatter-site buildings merge their identity and resources to become a single, non-profit, resident-controlled rental housing provider that benefits from the added support of housing professionals and experts who sit on the board to ensure sound corporate governance and financial management. Mutual housing associations are mission-driven to preserve real affordability for existing residents, even those with very low incomes, and can take full advantage of cross-subsidies and economies of scale that pool risks. A model that

combines the CLT with an MHA can create and sustain affordable housing for people whose income is as low as \$10,000/year. As an example, consider the Cooper Square Land Trust and Cooper Square MHA, which has for decades provided quality housing in the Lower East Side at extremely low cost. Most Cooper Square households make 40% of the AMI. But CLTs can also lease land to low-income cooperatives, to single family homeowners in a limited equity arrangement, and for non-housing purposes. For example, CLTs can support green spaces and community institutions as well as create jobs by leasing space to small businesses, local manufactureres, and non-profits at affordable rates.

By supporting the creation and growth of community land trusts, and by facilitating the transfer of City-owned or -controlled property to CLTs, the City could help tackle some of the most thorny and difficult aspects of the housing shortage: how to provide permanently affordable housing for the City's very low and extremely low income families.

NYCCLI recommends that the City:

**Use the Third Party Transfer program to create and preserve permanently affordable housing for very low income people.** The Third Party Transfer program could and should become a robust mechanism for maximizing affordable housing for very low and extremely low income households. The TPT should put a particular empasis on transferring property into community land trusts, which can both create housing that is affordable even for people with very low incomes and maintain the long-term affordability of that housing. To achieve this:

First, the City should expand the pool of properties that enter the Third Party Transfer program. Currently, only "distressed" properties go through the TPT program, which means that any properties available to a CLT through this program need extensive amounts of expensive repairs. 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 that are not financially viable because 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 statute, 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. These buildings are perfect candidates for transfer to a CLT, which could create a sustainable financial structure to enable the low-income residents to remain in their homes.

Another way to increase the flow of properties to CLTs is to capitalize on the Alternative Enforcement Program (AEP). In this program, the City identifies the most distressed buildings and, if owners do not make repairs, the City may enter the buildings, correct the hazardous conditions, and bill the owners for the repairs. Unpaid repair bills then become tax liens that allow those properties to move through the Third Party Transfer system. We would like to commend the Council for voting to expand the program last week and to connect AEP with a concrete strategy for stabilizing safe and affordable housing stock in our neighborhoods. 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.

Finally, the City should ensure that the ultimate disposition of all buildings in the TPT program is to a community land trust or non-profit, community-based developer that has the ability to create housing that is truly and permanently affordable even for people with very low incomes.

**Establish a Vacant Property Registry and Count.** Vacant properties, held empty by speculators or by the City for lack of development resources, could be used for affordable housing and other important public uses. Unfortunately, however, the City does not consistently track vacant properties, and thus it is unable to make a comprehensive plan to put them to better use. While the Administration states that it intends to inventory and track the vacant property under City control, that is simply not good enough. Most vacant property is in private hands. A vacant property registry and count would enable the city to identify vacant properties, discover the reasons for the vacancy, and create a plan for returning these properties to productive use. An effective vacant property registry and count would include the following elements:

- Engagement with advocates and government stakeholders about the types of property that should be counted and tracked to meet the City's housing goals;
- Creation of a central database to serve as a repository of information about vacant properties for City agencies and the public;
- A requirement that property owners and mortgage-holders register vacant property with the City;
- Escalating fines for failure to register which, if left unpaid, will become liens that the City can enforce through *in rem* foreclosure and transfer to third parties, such as community land trusts;
- A community reporting mechanism to enable the public to report vacant properties in their communities; and,
- A foot census/property count in neighborhoods with high concentrations of vacancy.

**Create a task force to review the disposition of vacant city-owned properties.** The City has a critical responsibility and opportunity to prioritize the disposition of city-owned vacant properties for truly affordable housing. A task force with diverse membership, including people and organizations from communities most at risk of losing affordable housing to gentrification, will help facilitate community participation and create transparency, which will help ensure that the City does not waste this opportunity.

**Issue a moratorium on the disposition of city-owned properties in East Harlem.** These properties, both vacant and occupied, could form a critical component of the East Harlem/El Barrio Community Land Trust, which is now under active development. The East Harlem/El Barrio Community Land Trust will provide an important model for other communities to create and preserve truly affordable housing for all residents.

**Ensure that rezonings do not lead to a net loss of affordable housing.** The City should not approve any additional rezonings without carefully reviewing their potential to displace existing low-income residents from neighborhoods and without significant, enforceable anti-harassment protections in place. As with the disposition of city-owned property, it is important to think about neighborhoods holistically, and not piecemeal, lest the City destroy more affordability than it creates. Beyond simply ensuring that rezonings do no harm, the City should seize the opportunity to use rezonings to create new revenue streams that will support the creation and preservation of affordable housing at pre-existing neighborhood-appropriate levels. Value created through public action must be recuperated for public benefit.

**Create a housing trust fund, with a dedicated revenue stream, to support creation and preservation of permanently affordable housing for the lowest income New Yorkers.** The Mayor's housing plan fails to invest sufficient resources to develop housing for the lowest income New Yorkers, who are most in need of housing and have the least political capital. To address this gap, the City should create a housing trust fund, supported by a dedicated revenue stream generated by increasing the property taxes on vacant and luxury properties. Funds from the housing trust fund would be used to develop and preserve truly affordable housing for people with very and extremely low incomes and could also support the development of CLTs.

We welcome the opportunity to participate in this conversation, and we hope the City Council and this Committee will view NYCCLI as a valuable resource. You can reach me at 212-680-5100 or [claudia@neweconomynyc.org](mailto:claudia@neweconomynyc.org).

Thank you for the opportunity to testify today.