



Testimony of

The Legal Aid Society, Coalition for the Homeless, Community Service Society, and Voices Of Community Activist and Leaders (VOCAL-NY)

**Regarding Application Number N 240290 ZRY
(City of Yes Zoning for Housing Opportunity)**

Before the New York City Council Subcommittee on Zoning and Franchises

October 24, 2024

Introduction

Thank you to Chair Riley and the New York City Council Subcommittee on Zoning and Franchises for holding this very important hearing. The Legal Aid Society, Coalition for the Homeless, Community Service Society, and VOCAL-NY welcome this opportunity to submit comments concerning the City's efforts to expand housing opportunities for New Yorkers by allowing for more housing to be built in areas that are underutilized. Housing development has long lagged behind the population growth. While we commend the articulated objective of addressing the City's vast housing challenges and agree that more housing should be constructed in areas that are underutilized, an effective plan should address the most acute housing needs and target the most vulnerable.

Declining Affordability of Housing

Many New York City renters are facing dire circumstances. In the face of fewer rental opportunities and higher prices, renters are suffering from a growing disparity between what they can afford and their actual rent. According to the New York City Housing and Vacancy Survey (NYCHVS), the median rent for New York City renters in 2023 was \$1,641.¹ In addition, between 1993 and 2023, there was a net loss of over 600,000 units renting under \$1,500 and a net gain of over 75,000 units with rents of \$5,000 and more.² The median renter income is \$70,000,³ yet 25 percent of renter households earn less than \$25,000 and 15 percent earn between \$25,000 and \$49,999. As a result, for half of New York City's renter households, those earning under \$70,000, the typical renter is severely rent burdened.⁴ Further, among households earning less than \$25,000 a year who do not live in public housing or report having a voucher, an astonishing 86 percent are severely rent burdened.⁵ This situation is compounded by the fact that, according to the NYCHVS, in 2023, there were 33,210 apartments vacant and available to rent.⁶ Of that number, only 4,442 apartments, or 13 percent, were affordable to New Yorkers earning less than \$50,000 a year.⁷ Only 12,500, or 37 percent, were available to New Yorkers

¹ Gaumer, E. *The 2023 New York City Housing and Vacancy Survey: Selected Initial Findings*. New York, NY: New York City Department of Housing Preservation and Development; 2024. Page 13.

<https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf>

² *Id.* at 19.

³ *Id.* at 42. There was a large increase in the median household income which was driven by the huge influx of higher income households coming into New York City. "

⁴ *Id.* at 55.

⁵ *Id.* at 57.

⁶ Gaumer, E. *The 2023 New York City Housing and Vacancy Survey: Selected Initial Findings*. New York, NY: New York City Department of Housing Preservation and Development; 2024. Page 26.

<https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf>

⁷ *Id.*

earning under \$100,000 a year.⁸ In fact, the median income a household would need to afford one of the vacant apartments is somewhere between \$100,000 and \$150,000 a year, far above the median household income of \$70,000 and out of reach for households who experience the most severe rent burden.⁹ Needless to say, the clients of The Legal Aid Society and the Coalition for the Homeless and VOCAL-NY members cannot afford these rents.

The Petitioners in the matter *Vincent v. Adams*¹⁰ are illustrative of the vulnerable populations that need access to rental assistance. Plaintiff CT, for example, struggles to keep herself and her daughter housed after a significant injury rendered her unable to work. Under current rules, her disability income automatically disqualified her for the FHEPS rent supplement. However, her Social Security Disability Insurance (“SSDI”) income of \$1,213 per month is less than her \$1,254.60 per month rent. She is eligible for a voucher under the City Fighting Homelessness and Eviction Prevention Supplement (CityFHEPS) Reform Laws that the City Council passed, but she faces eviction from her Bronx apartment because the City refuses to implement the law. Similarly, Petitioners MC and SA are both elderly tenants with relatively low rents of \$1,006 and \$1062.33, respectively. However, these rents also exceed their incomes, and they are unable to pay the rent for the homes they have long resided in because the City refuses to implement the law that was passed to give them access to the critical lifeline that is CityFHEPS.

Households such as the *Vincent* Petitioners face the prospect of shelter and virtually no chance of finding a new apartment whose rent is as low as their current rent. If they are able to

⁸ *Id.*

⁹ *Id.*

¹⁰ Index No. 450563/2024

secure a voucher as a result of being in shelter, the rent will be much higher and will cost the City a great deal more. In many cases, such a household may be forced to relocate outside of the City. The direct correlation between household income and whether a household is able to remain in New York City is becoming increasingly apparent. In fact, between 2021 and 2023, there has been a 2-point loss in the number of NYC households earning between \$50,000 and \$99,999, 3-point loss of households earning \$25,000 to \$49,999 and 5-point loss of households earning less than \$25,000.¹¹

Unfortunately, affordability does not seem to be a prominent feature of the proposed zoning plan. It certainly does not address the affordability crisis that plagues the lowest-income New York City households. We are concerned that the housing units that will be developed under the proposed zoning plan will be beyond the financial reach of low-income individuals and families. This raises critical apprehensions regarding the plan's capacity to adequately serve the socioeconomic diversity of New York City residents, ultimately jeopardizing the availability of affordable housing options for those who are most in need.

For example, the Universal Affordability Preference would allow builders to add 20 percent more units if those units are affordable to households earning 60 percent of the Area Media Income (AMI). Currently, 60 percent of the AMI for a household of one is \$65,220 per year and \$74,580 for a household of two.¹² This approach will leave out wide swaths of households that do not meet this income requirement and for whom the need is most acute. The zoning plan should include low-income New Yorkers such as those who are eligible for or

¹¹ *Id.* at 42-43

¹² <https://www.nyc.gov/site/hpd/services-and-information/area-median-income.page>

already participating in the Section 8 Housing Choice Voucher Program (HCV program). A one-person household cannot earn more than \$54,350 and a two-person household cannot earn more than \$62,150 per year to be income eligible for the New York City Housing Authority (NYCHA) administered Section 8 program.¹³ When NYCHA recently reopened the waitlist for the HCV program for the first time in nearly 15 years,¹⁴ over 630,000 households applied within a single week. Such a response demonstrates the vast scale of need for this program and the number of households who will not benefit from the Universal Affordability Preference. For the New York City funded and administered CityFHEPS rental assistance program, a household of two must earn no more than \$40,880.¹⁵ The high demand for this program likewise demonstrates the need for housing that is affordable to the lowest income households, and that the Universal Affordability Preference criteria will not create more housing that is affordable to the households that need it most.

Declining Housing Availability

Unfortunately for New York City renters, declining affordability is coupled with declining availability. New York City remains in a housing emergency. The number of vacant units affordable to low-income New Yorkers is meager. According to the most recent NYCHVS, New York City's net rental vacancy rate is 1.41 percent.¹⁶ This is not only one the lowest recorded vacancy rates since 1968, but also a sharp drop from the previous 2021 rate of

¹³ <https://www.nyc.gov/site/nycha/section-8/applicants.page>

¹⁴ <https://www.nyc.gov/office-of-the-mayor/news/390-24/mayor-adams-nycha-will-accept-section-8-housing-choice-voucher-applications-first>

¹⁵ [https://www.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/DSS-7n-\(E\).pdf](https://www.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/DSS-7n-(E).pdf)

¹⁶ <https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf>

4.54 percent and well below the 5 percent threshold needed for declaration of an emergency. The picture is even more dire for the “very low rent” apartments (rents less than \$1,100), for which the vacancy rate in 2023 was only 0.39 percent.¹⁷ The 2023 vacancy rate for units between \$1,100 and \$1,649 was no better at 0.91 percent. The vacancy rate for units between \$1,650 and \$2,399 was a frightening 0.78 percent.

This decline in availability extends across all the housing stock in which middle- and low-income households reside. There remain only 77,000 units covered by either the Mitchell-Lama program or the federally subsidized Project-Based Section 8 program. This is a loss of 35 percent since 1990.¹⁸ This combination of market forces and governmental decisions has worked together to have a devastating effect on low- and moderate-income New Yorkers.

The declining number of vacant units available for rent, the fact that housing expansion has not kept pace with population growth, and the ongoing public housing crisis have all contributed to the scarcity of available affordable housing.

Safe Affordable Housing is Critical for Individual Wellbeing and New York City's Economic Recovery

Safe, affordable housing is critical. When families have stable housing, it leads to better outcomes in health, education, and employment. Housing instability has been linked to greater

¹⁷ Gaumer, E. *The 2023 New York City Housing and Vacancy Survey: Selected Initial Findings*. New York, NY: New York City Department of Housing Preservation and Development; 2024. Page 21.

<https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf>

¹⁸ Oksana Miranova, *Closing the Door: Subsidized Housing at a Time of Federal Instability*, Community Service Society, March 2018. [https://smhttp-ssl-](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Closing_the_Door_FINAL_WEB.pdf)

[58547.nexcesscdn.net/nycss/images/uploads/pubs/Closing_the_Door_FINAL_WEB.pdf](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Closing_the_Door_FINAL_WEB.pdf)

risk of depression,¹⁹ worse outcomes for chronic illnesses like diabetes,²⁰ low-weight and/or preterm infants,²¹ and general adverse childhood health.²² Frequent moves before a child is seven years old lead to greater thought-related and attention-related problems.²³ These problems can reduce educational achievement. Children who experience high mobility between third and eighth grades do worse in school.²⁴ Forced moves are also a predictor for job loss.²⁵ If keeping employment without stable housing is difficult, finding new employment while unstably housed is even more difficult. The cost of adverse health outcomes, poor educational achievement and lack of employment is significant and will ultimately harm New York State's ability to grow its economy.

¹⁹ Burgard, S. et al, *Housing Instability and Health: Findings from the Michigan Recession and Recovery Study*, Social Science & Medicine, December 2012.

<https://www.sciencedirect.com/science/article/abs/pii/S0277953612006272?via%3Dihub>

²⁰ Berkowitz, et al. *Unstable Housing and Diabetes-Related Emergency Department Visits and Hospitalization: A Nationally Representative Study of Safety-Net Clinic Patients*, 2018

<https://pubmed.ncbi.nlm.nih.gov/29301822/#:~:text=Conclusions%3A%20Unstable%20housing%20is%20common,for%20vulnerable%20individuals%20with%20diabetes.>

²¹ Leifhart, et. al, *Severe Housing Insecurity during Pregnancy: Association with Adverse Birth and Infant Outcomes*, Int J Environ Res Public Health. 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7700461/>

²² Sandel, et al, *Unstable Housing and Caregiver and Child Health in Renter Families*, Pediatrics, 2018, <https://publications.aap.org/pediatrics/article/141/2/e20172199/38056/Unstable-Housing-and-Caregiver-and-Child-Health-in>

²³ Gaylord, et al., *Impact of housing instability on child behavior at age 7*, Int J Child Health Hum Dev., 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8442946/>

²⁴ Cutuli, et al, *Academic achievement trajectories of homeless and highly mobile students: Resilience in the context of chronic and acute risk*. Child Development 2013. https://www.researchgate.net/profile/Jeffrey-Long-6/publication/24250390_Academic_achievement_of_homeless_and_highly_mobile_children_in_an_urban_school_district_Longitudinal_evidence_on_risk_growth_and_resilience/links/5c9b85c2a6fdccd4603f111c/Academic-achievement-of-homeless-and-highly-mobile-children-in-an-urban-school-district-Longitudinal-evidence-on-risk-growth-and-resilience.pdf

²⁵ Desmond, et al, *Housing and Employment Insecurity among the Working Poor*, Social Problems, 2016. <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>

Recommendations

We recommend that the City:

- Immediately implement the CityFHEPS expansion as passed into law by the New York City Council in 2023. This would allow families and individuals in shelter to seek permanent affordable housing and allow households facing eviction to remain in their homes and, in many cases, avoid having to even appear in the already overburdened housing court. The Legal Aid Society represents several tenants in *Vincent*²⁶ who, like those described above, cannot meet their needs with their current income that, in some cases, is the same as the monthly rent. A voucher would make their rent obligation affordable. They would not have to live under the perpetual specter of displacement. They would not have to consider foregoing other basic needs to pay their monthly rent.
- Require that the additional housing units added to buildings using the Universal Affordability Preference be available to high-need households, particularly those that are eligible for vouchers such as Section 8 and CityFHEPS. In addition, these units should be set aside for voucher holders to facilitate their entry into permanent housing, particularly in light of the rampant and largely unchecked discrimination that they face as voucher holders in the rental market.²⁷
- While the zoning program primarily presents Accessory Dwelling Units as a means of accommodating growing families or allowing older people to live closer to family members and caretakers, the units could also be made available to other tenants. Before

²⁶ Index No. 450563/2024

²⁷ <https://www.nytimes.com/2021/03/15/nyregion/real-estate-lawsuit-section-8-discrimination.html>

this is the case, the City should include strong tenant protections and capital investments as part of the Accessory Dwelling Unit program, and other proposals necessary to legalize basement and cellar apartments, ensuring that the most vulnerable households are served. One way the City could achieve this goal is to establish a program under which property owners are provided with low-interest or forgivable loans for such capital investments conditioned on commitments to lease the Accessory Dwelling Units to CityFHEPS or Section 8 voucher holders or other individuals earning 80% or less of the area median income for a minimum of ten years.

- Increase funding for development and preservation of permanently and deeply affordable housing, through programs like Open Door and Neighborhood Pillars.
- Implement a tenant/non-profit right of first refusal framework like the Community Opportunity to Purchase Act (COPA), paired with permanent affordability, to combat any potential speculation resulting from changes to the city's zoning code.
- Invest in tenant protections, including additional funding for Right to Counsel and Source of Income (SOI) Discrimination enforcement.
- Investing in a fully funded, permanent, Anti-Harassment Tenant Protection (AHTP) program as a necessary part of any effort to protect, reclaim, and expand affordable housing in New York City. AHTP is currently the only City housing program that provides legal representation to tenants in buildings converting to low-income, limited equity HDFC coops and to shareholders in low-income limited equity coops. AHTP provides tenants with access to justice and legal resources for affirmative and preventive services, diverting eviction cases from being brought to court and preserving and

improving the quality of the affordable housing stock. AHTP also promotes and supports community education for tenants, assistance for tenants experiencing harassment and housing discrimination, and aids tenants who challenge unlawful rent increases and illegal deregulation and/or losses of affordable housing.

- NYCHA holds a key to unlocking billions in potential revenue through the sale of Transferable Development Rights (TDRs). With 78 million square feet of unused development rights, NYCHA has a golden opportunity to revitalize its infrastructure and ensure the sustainability of public housing in NYC. However, current policies severely limit the ability to leverage these assets. NYCHA developments are too far from viable sites to receive their air rights under current policy. And when they do, because there is no competition, rights are sold at a discount hurting the agency and residents. Over 98 percent of NYCHA developments are landlocked, unable to utilize their TDRs effectively, highlighting the need for a citywide, as-of-right framework for TDR transfers. By expanding TDR transferability within a half-mile radius, NYC could unlock all unused development rights, generating between \$4.2 to \$8.4 billion. This is badly needed funding that could address a major backlog in capital funding. The City of Yes prioritizes increasing housing supply in NYC and includes an expansion of TDR for landmarks, but leaves NYCHA residents behind. We recommend the creation of a plan by DCP to review and submit zoning language that expands TDR for NYCHA campuses.

While our recommendations ensure that the City of Yes for Housing Opportunity centers on affordability and tenant protections, there are many important features in the proposal that should not, under any circumstances, be compromised or watered down. These include:

- Ending mandatory parking minimums in new housing construction;
- Enabling the construction of housing on commercial "main streets" in low-density areas;
- Making density bonuses available for new affordable housing built anywhere in the city, as is already the case for senior housing; and

Addressing affordability issues in addition to making changes to the zoning code. The Council's negotiations should add to, rather than subtract from, the current proposal.

Conclusion

Thank you for the opportunity to submit testimony before the New York City Council Subcommittee on Zoning and Franchises. We hope that the City will prioritize the needs of the most vulnerable in this overheated rental market.

The Legal Aid Society

The Legal Aid Society (Legal Aid) is the nation's oldest and largest not-for-profit legal services organization. Legal Aid provides comprehensive legal services in all five boroughs of New York City for people who cannot afford to pay for private counsel. Since 1876, Legal Aid has advocated for low-income families and individuals and has fought for legal reform in City, State, and federal courts across a variety of civil, criminal and juvenile rights matters. Legal Aid takes on 200,000 cases annually, including thousands of cases in which we fight for the rights of tenants in regulated and unregulated apartments across the city. Legal Aid also takes on law reform and appellate cases, the results of which benefit more than 1.7 million low-income New Yorkers; the landmark rulings in many of these cases have a state-wide and national impact.

Coalition for the Homeless

The Coalition, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to address the crisis of modern homelessness, which is now in its fifth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illnesses and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: permanent housing for formerly homeless families and individuals living

with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes 800 to 1,000 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, had to increase our meal production and distribution by as much as 40 percent and has distributed PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. Since the pandemic, we have been operating a special Crisis Hotline (1-888-358-2384) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women.

Pursuant to the decree, the Coalition serves as the court-appointed monitor of municipal shelters for homeless single adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by Legal Aid and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.

During the pandemic, the Coalition worked with Legal Aid to support homeless New Yorkers, including through the *E.G. v. City of New York* Federal class action litigation initiated to ensure Wi-Fi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.

Voices Of Community Activists & Leaders (VOCAL-NY)

Voices Of Community Activists & Leaders (VOCAL-NY) is a statewide grassroots membership organization that builds power among low-income people affected by HIV/AIDS, the drug war, mass incarceration, and homelessness in order to create healthy and just communities. We accomplish this through community organizing, leadership development, advocacy, direct services, participatory research and direct action. VOCAL-NY is building a movement of low-income people dedicated to ending the AIDS epidemic, the war on drugs, mass incarceration, and homelessness. We fight for systemic change rooted in justice, compassion, and love. We approach this work with a firm belief in reducing harm and ending stigma, and the knowledge that the issues impacting our communities are driven by institutional oppression, not personal

failings. Our campaigns have saved or improved the lives of hundreds of thousands of New Yorkers across the state.

Community Service Society of New York

The Community Service Society of New York (CSS) has worked with and for New Yorkers since 1843 to promote economic opportunity and champion an equitable city and state. Through a strategic combination of data-driven research, direct services, and people-driven advocacy, we ensure New Yorkers have the power to create change in their lives and the life of our city and state. Our programs, policy analysis, legal advocacy, and campaigns expand access to health care, safe and affordable housing, employment, opportunities for individuals with conviction histories, consumer debt assistance, and more—making a tangible difference in the lives of millions.