Neighborhood Economic Development Advocacy Project

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Testimony before the New York City Council Committees on Finance and Community Development

Proposed Int. 26-A, a Local Law to amend the administrative code of the City of New York, in relation to the sale of tax liens.

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Thank you, Councilmembers Recchia and Vann, and thanks to all of the Committee members who called this hearing today. I am Alexis Iwanisziw, Program Associate at the Neighborhood Economic Development Advocacy Project (NEDAP), a resource and advocacy center that works with community groups to promote financial justice in low-income communities and communities of color.

With thousands of one- to four-family homes on the 2010 lien sale list, the sale of both property tax and water/sewer liens is a massive problem. Both this year and in past years, the liens that were sold were disproportionately concentrated in communities of color in NYC —the same communities already hard hit by predatory lending and foreclosure, as well as unemployment, underemployment, and the other numerous effects of the recession. (*See attached maps*.) The lien sale causes additional and substantial financial harm for the families and seniors that are most struggling to stay afloat and make ends meet in tough economic times.

We think that the City could best address this fundamental problem by carving-out all Class One owner-occupied properties from the lien sale, but recognize that this approach may not be politically feasible. At the very least, changes to the lien sale law are critical toward achieving a balance that will enable the City to collect needed revenue, but not be destructive to low income communities and communities of color.

<u>Fees and interest</u>

The two principal purchasers of tax and water liens are Xspand and Mooring Tax Asset Group (MTAG). Xspand, the largest purchaser, is a wholly owned subsidiary of JP Morgan Chase.

The current law allows lien purchasers to gouge homeowners with 18% interest rates after the sale, and provides no limitations on the fees that these purchasers can charge. Once the liens are sold, interest and fees make it extremely difficult for homeowners to settle their debts. Xspand and MTAG routinely charge unconscionable fees to homeowners facing foreclosure on their liens. Following are two of many examples, which are not atypical (my colleagues will provide further examples in their testimony):

1) A Bronx homeowner has a $13,890.59 property tax lien certification which was sold in the 2009 lien sale (this total already includes the 5% surcharge). One year later, the Xspand payoff includes $6,769.50 in fees, and $3,450.44 in interest, for a total payoff of $24,110.53.
2) A Queens homeowner has $5,370.75 water lien certification which was sold in the 2008 lien sale (this total already includes the 5% surcharge). The most recent MTAG payoff includes $5,747.71 in fees and $2,652.10 in interest, for a total payoff of $13,770.56.

The tax and water lien sale should serve the public interest, and should not be a profit generator for JP Morgan Chase. Chase and MTAG should have to answer as to why they are gouging the City's must economically vulnerable homeowners with unjustifiable, exorbitant fees, and the City must address the fact that the current law allows lien purchasers to charge inflated fees without any apparent accountability.

The lien law should contain a one-year hold on interest and fees for Class One properties, to give distressed homeowners an opportunity to redeem the lien after it has been sold and before the lien amount rapidly doubles with fees and interest. For Class One properties, the interest rate and fees that are allowable <u>after</u> the one-year hold period should be capped at a far lower and more reasonable amount. Lien servicers should be required to provide borrowers (and the Department of Finance) with a detailed breakdown of fees that are charged, including the basis for such fees, as required in Int. 26-A.

The Commissioner of Finance is currently obligated, under §11-355 of the NYC Administrative Code, to submit an annual report to the Council concerning the sale of tax liens during the preceding year. One category of information that DOF is supposed to report to the Council on includes "a report of servicer activities during the immediately preceding year." NEDAP submitted a FOIL request to DOF for such reports and found no information whatsoever regarding servicer activities, providing further evidence that Chase and MTAG are operating without any oversight.

<u>Affordable pre-lien payment plans</u>

Many low income homeowners are unable to afford the pre-lien payment plans offered by DOF and DEP. As a result, these homeowners are put into the lien sale, where their debt only multiplies, leaving them at risk of foreclosure. The lien law should provide a statutory affordable payment plan scheme for distressed homeowners in owner-occupied Class One properties. This would help preserve low income homeownership, particularly in communities of color, by allowing those homeowners who come forward in the period before the lien sale to enter into a payment plan based on their actual ability to pay.

The payment plan proposal included in Int. 26-A is a step in the right direction, but does not sufficiently address the needs of low and moderate income homeowners in New York City. Homeowners in financial distress may not be able to afford a 10% down payment on a several thousand dollar tax bill, and in those cases, a payment plan modeled after DEP's pilot Water Debt Assistance Program is necessary. The Water Debt Assistance Program "freezes" the lien amount and the lien is not sold, rather, it is paid upon death, sale or refinance as long as the homeowner can pay their current water bill going forward. The statutory plan might provide that a certain portion of the tax or water lien could be frozen, with the low income homeowner making affordable monthly payments on the remaining part. The Water Debt Assistance Program is only available to homeowners who are delinquent or in foreclosure on their mortgages. The statutory payment plan (for both water and tax liens) should be expanded to senior, disabled, and low income homeowners, based on need.

Notice

The current notice requirement is woefully inadequate. When the lien sale list is published in the newspaper, homeowners are often unaware that their home is on the list, and the 30 day notice that homeowners subsequently receive in the mail does not provide enough time for many distressed homeowners to find a solution.

The proposed Int. 26-A addresses this problem for Class One properties by requiring that one notice be sent by certified mail 120 days prior to the sale and a second notice be sent thirty days prior to the sale. These notices ensure that a homeowner has the maximum ability to enter into a payment plan or otherwise resolve the matter before lien is sold. Notices should be in easy to understand language and should include clear information about available exemptions. Notices should also state that, if the lien is sold, the homeowner will face additional fees and the risk of foreclosure.

Exemptions

Advocates have gotten numerous calls from senior or disabled homeowners whose lien was sold, even though they should have qualified for an exemption from the lien sale. For years, too many homeowners have been unaware that they qualify for an exemption, and are put at risk of foreclosure when their liens are sold. This is bad for the City, and bad for communities.

The City should be obligated to identify all seniors or disabled homeowners who should be exempted from the lien sale and Int. 26-A must be amended to include such a provision. This requirement should apply equally to both tax and water liens—given that both can have devastating effects on low income homeowners, there is no reason to differentiate. Once the exempt homeowners are removed from the lien sale, they can enter into affordable payment plans directly with the City, thereby avoiding thousands, and sometimes tens of thousands, of dollars in unaffordable fees and interest.

Buy-backs

The lien law must contain a remedy for homeowners whose liens are erroneously sold, in order to prevent irreparable harm to homeowners. If a lien is mistakenly sold, or if the homeowner whose lien is sold is a senior or disabled homeowner and eligible for an exemption from the lien sale, the City should be obligated to repurchase the lien from the Trust following the sale. There should be a mechanism for a homeowner to request a review of the sale of their lien, through DOF or DEP, if the homeowner believes that their lien was erroneously sold. The buy-back of erroneously sold liens should be required, not left at the discretion of the commissioner of finance.

Stand-alone water liens

Stand-alone water liens are a particular problem for lower income homeowners. Because a stand-alone water lien can now be sold after only one year of non-payment, a huge number of stand-alone water liens now dominate the lien sale. Since stand-alone water liens were authorized to be sold, the vast majority of the liens sold on Class One properties in some of the City's most distressed neighborhoods have been stand-alone water liens. NEDAP strongly supports the proposed provision of Int. 26-A which would extend the period for which water arrears must be unpaid before they can be converted to a lien and sold.

We recognize the City's need to generate revenue on unpaid tax and water arrears through a lien sale. It is critical, however, that this need is balanced with reasonable safeguards to make the lien sale less onerous for the City's most economically vulnerable homeowners, and to prevent gouging by lien sale purchasers.