

September 22, 2023

**New York City Council
Oversight Hearing Before the Committee on Public Housing
Re: \$78.34 Billion: NYCHA's Physical Needs Assessment**

Written Testimony of the New York Legal Assistance Group

The New York Legal Assistance Group (“NYLAG”) uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustices. We address emerging and urgent needs with comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality.

NYLAG works closely with community organizations, agencies, and elected officials, and operates numerous legal clinics in locations such as community centers, courthouses, and hospitals. Since the implementation of the Right to Counsel at the NYCHA Office of Impartial Hearings, NYLAG has created the Public Housing Justice Team, known as “PHJP,” within its Tenants’ Rights Unit. NYLAG’s PHJP is the first team of attorneys in New York City solely devoted to the representation of public housing residents. PHJP represents tenants in both Section 9 and Permanent Affordability Commitment Together, known as PACT, developments.

More often than not, our clients, both in Section 9 and PACT developments, are subjected to unacceptable living conditions. As their advocates, we see firsthand the barriers residents face in getting much-needed repairs.

The appalling living conditions facing NYCHA residents operate at two levels. The first is systemic. NYCHA’s 2023 Physical Needs Assessment, or “PNA,” estimates 20-year physical needs of \$78.3 billion across NYCHA’s current holdings. NYCHA has indicated that 54% of these needs are immediate, requiring repair or replacement in the next year. Likewise, NYCHA has indicated that approximately half of the overall need can be covered through current funding, including capital projects, and privatization schemes.

The deterioration of NYCHA’s housing stock was predictable and preventable. It is the direct result of NYCHA’s persistent failure to complete regular and preventative maintenance, combined with the decades-long systematic divestment from public housing at every level of government. This disinvestment from public housing and public housing tenants is both a social justice issue and a racial justice one. NYCHA residents are disproportionately Black, Latine, and low income. Given these demographics, the systemic divestment from public housing disproportionately harms people of color, people with low incomes, and other systemically marginalized groups. We urge City Council to fund NYCHA adequately to ameliorate this longstanding systemic neglect.

The ongoing horrific living conditions too often seen in NYCHA developments operate at the individual tenant level as well. Although the PNA includes plans to cover some of NYCHA’s physical need through large, sweeping campaigns, it markedly leaves individual residents struggling with significant housing code violations in their homes without meaningful access to relief. We implore City Council to remember NYCHA residents who have contended with deplorable conditions and ongoing repair needs for years, unable to get relief. The push to privatize

public housing, the systemic neglect of public housing, and the disregard for residents' rights hastens the displacement of public housing residents.

We submit the following testimony to urge and remind the City Council of the following matters: regardless of the expected cost over the next 20 years, NYCHA remains responsible for maintaining its buildings and ensuring that all NYCHA residents, our clients included, are afforded safe and habitable homes. The PNA and the expected high costs of necessary work are not an excuse to not provide repairs, or a rationale to privatize public housing. We implore this City Council to take this as a call to mobilize and appropriate the money to fund NYCHA adequately, to invest in our public housing residents, and to save public housing.

I. NYCHA's PNA Is Not a Justification for Its Failure to Provide Safe and Healthy Housing to Current Residents and New Yorkers in Need.

NYCHA is the largest landlord in New York City, holding approximately 7% of the rental stock, and housing an estimated 500,000 people—more than the total population of Atlanta or Miami.¹ Of those 500,000, 90% are Black or Latine, nearly a quarter are over 62, and over 85,000 are children under the age of 18.² NYCHA households tend to be long-term, multigenerational homes that provide stable housing for generations of New Yorkers, and serve as the hub of family life. NYCHA is also the last opportunity for deeply affordable housing in New York City. Indeed, it is often the only hope for New Yorkers with low-income and no-income. Without the essential housing lifeline that NYCHA provides, tens if not hundreds of thousands of New Yorkers, including children and the elderly, would face homelessness.

As a landlord in New York City, NYCHA is obligated to follow with the City's Housing Maintenance Code, comply with HUD Housing Quality Standards, and uphold the implied warranty of habitability, which ensure that its residents' apartments and buildings are safe and livable. When it fails to do so, residents' homes become unsafe and even completely uninhabitable. However, unlike other New York City renters, NYCHA residents do not have the option of calling 311 to report a problem with their apartments. Instead, NYCHA tenants must raise issues to their landlord, NYCHA. But, when residents raise concerns to NYCHA about their living conditions, instead of conducting repairs in a reasonable time or predictable manner, NYCHA staff look for any opportunity to close out repair tickets without fixing the problem. We hear regularly that instead of knocking on our clients' doors, NYCHA staff leave notes claiming they weren't home when they were. NYCHA staff often point to the PNA as an excuse for why it cannot fix even simple problems. NYLAG's PHJP sees this problem frequently. PHJP represents NYCHA residents in a variety of types of proceedings, including termination of tenancy, cases involving allegations of nonpayment of rent, and HP Actions for apartment conditions. Regardless of the type of case, one thing is near constant: Our clients need basic repairs done and NYCHA refuses to do them.

Whether or not apartment conditions are the initial reason for our representation, our clients' conditions issues come up in nearly every single case. When we bring these basic habitability issues to the NYCHA attorneys, those attorneys merely tell us there is nothing they can do. Both in informal conversations, and on the record in housing court, NYCHA attorneys cite to the funding deficiencies identified by the PNA to excuse their refusal to conduct even low-cost

¹ NYCHA Connected Communities Guidebook (2020), page 17, *available at* <https://www.nyc.gov/assets/nycha/downloads/pdf/Connected-Communities-Guidebook.pdf>.

² NYCHA Resident Data Book Summary (2022), page 2, *available at* <https://www.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Book-Summary-2022.pdf>.

basic repairs. Sometimes, we and our clients are simply told that the repair will not get done until NYCHA receives funding to renovate the entire development completely. By way of example:

1. In a Holdover Proceeding in Manhattan Housing Court, a NYCHA attorney refused to agree to replace a broken sink in a resident's apartment, relying on the PNA and claiming they would be fired if they agreed to it.
2. Similarly, one of our clients has been waiting for a functional kitchen sink for over a year. NYCHA removed the old sink and has yet to install a new one.
3. In yet another example, the lock on a client's mailbox has been broken for months, meaning her legal and personal mail was left unsecured. Even though her mailbox can be fixed with a *single screw*, NYCHA has refused and is refusing to fix it, telling her she has to wait until they have the money to replace all the mailboxes in the entire development.
4. We recently met a client in the middle of an HP Action whose living room floor tiles have deteriorated and become detached from the flooring underneath due to flood damage from broken pipes. Every morning our client and her senior husband wake up in a dangerous, nearly uninhabitable home. NYCHA knows the condition of the home, but the devastating conditions remain unaddressed.

Among our own cases we have many other examples of NYCHA's attempt to flout its obligation to maintain habitable apartments by hiding behind the PNA, which is both an unacceptable abdication of NYCHA's responsibilities to its residents, and not supported by the PNA. The staggering figures included in the PNA should not mean that no repairs are done until all repairs for the next 20 years are funded—as it too frequently NYCHA's asserted position.

NYCHA's flagrant failure to comply with local, federal, and common law legal requirements is appalling and must end. We urge the City Council to provide the necessary oversight and accountability to ensure that NYCHA is meeting its obligations to tenants. We also urge the Council to provide guidance to NYCHA attorneys and staff, as well as housing court staff, that it is unacceptable for NYCHA to rely on the PNA as justification to not provide necessary repairs to individual households. We strongly urge the City Council to put in place much-needed protections for NYCHA tenants to ensure that they are able to access essential repairs. In particular, the Council must ensure that NYCHA does not use the findings in this PNA to justify not doing necessary repairs to vacant apartments, or inhabited ones.

II. The PNA Does Not Justify the Continued Privatization of Public Housing Through RAD/PACT or the Preservation Trust.

In the PNA, NYCHA relies on the PACT program and Preservation Trust privatization in its plan to close the gap in its sorely needed funding. However, City Council should not allow NYCHA to use the PNA to justify the privatization of an essential public good at the expense of the rights and security of public housing tenants.

The current state of conditions in NYCHA was not a *fait accompli*, but rather the culmination of decades of government divestment and deliberate inaction and misrepresentation by NYCHA. This self-manufactured crisis cannot be the basis for privatization and subsequent sharp reduction in procedural and substantive rights of residents.

In the PNA, NYCHA relies on PACT and the Preservation Trust as solutions to the public-housing-funding crisis. However, PACT is not a silver bullet. NYCHA induces its residents to vote

in favor of these privatization schemes by making promises of improved conditions and access to repairs that, even after conversion, these residents will likely never see. Instead, post-conversion, residents are left with private management companies that demolish developments and line their own pockets with market-rate apartments built on the back of public housing and taxpayer dollars. And residents in converted developments continue to be denied even basic apartment repairs. Our clients who live in developments that have been converted from NYCHA management to private management continue to live under the same dire and uninhabitable conditions they were subjected to before. Private management companies, like NYCHA, consistently refuse to conduct even the most basic repairs. For example:

1. Ms. F, who was a NYCHA tenant for decades, was left to live with a broken fridge for *years* after conversion to RAD/PACT. When Ms. F's granddaughter alerted the new private management about mold in the apartment, they told her to sue Ms. F instead of taking responsibility and doing the work required.
2. When Ms. J finally received a lease in her name, years after RAD conversion, Section 8 denied her application after inspecting the apartment because of the extensive repairs that needed to be done—even though the development was one of the first to convert to RAD/PACT. The necessary repairs ranged from faulty wiring to pervasive mold conditions, all issues Ms. J had been pleading with management to fix for years.

NYCHA uses the PNA to evade accountability and quite literally pass the buck to private companies—which mimic NYCHA and also shirk their obligations to residents. The conditions in PACT buildings are so bad that they have forced international human rights organizations to take notice. In January 2022 Human Rights Watch published a damning report called "The Tenant Never Wins" about the terrible conditions in PACT developments.³ City Council must take action to stop NYCHA's misuse of the PNA.

III. NYCHA's 2023 PNA Is Not a Defense to NYCHA's Alarming High Vacancy Rate—Particularly Amidst New York City's Homelessness Crisis.

NYCHA's neglect of its housing stock is particularly harmful given the ongoing homelessness crisis. Housing is a critical solution to homelessness. There are approximately 19,569 families experiencing homelessness in New York City.⁴ And yet, according to City Council data, there were 3,300 vacant NYCHA apartments in December 2022. Moreover, we believe that number is growing due to the sharp increase in average time it takes NYCHA to turnaround vacant apartments. That turnaround time was just 160 days in 2022, but has now skyrocketed to 370 days.⁵ Making matters worse, NYCHA frequently points to the PNA as an excuse to withhold viable housing from the City's most vulnerable residents. NYCHA has stated that the reason it can't lease these apartments amidst NYC's acute housing crisis is because of repair conditions. The delay in repairing conditions for current tenants, then leads to NYCHA dragging out the re-renting process

³ "The Tenant Never Wins" Private Takeover of Public Housing Puts Rights at Risk in New York City, Human Rights Watch (January 2022), *available at* <https://www.hrw.org/report/2022/01/27/tenant-never-wins/private-takeover-public-housing-puts-rights-risk-new-york-city>.

⁴ Coalition for the Homeless, Basic Facts About Homelessness: New York City Data and Charts (July 2023), *available at* <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city-data-and-charts/>.

⁵ Mayor's Management Report: New York City Housing Authority (September 2023), *available at* <https://www.nyc.gov/assets/operations/downloads/pdf/mmr2023/nycha.pdf>.

for more than a year in order to then, finally, address repairs. These delays in re-renting vacant units are unacceptable, needlessly exacerbate the housing crisis, and sap rental revenue that NYCHA desperately needs to maintain its housing stock.

NYCHA's failure to turnaround vacant apartments within its developments has real and serious consequences for New Yorkers. Current NYCHA residents are unable to obtain reasonable accommodation or safety transfers because, even if they can identify empty apartments within their developments that would meet their needs, those apartments require repairs that have not been addressed. Worse, it means that those families on NYCHA's never-ending waitlist are unlikely to ever see the public housing they desperately need. NYCHA's inaction means that more than 3000 families are stuck in shelters while there are at least 3,300 potential stable and affordable homes sitting vacant and falling further into disrepair.

These numbers are not surprising to those of us that work with NYCHA residents every day. We hear stories about apartments sitting empty for years from our clients who are desperate to relocate to get their own repairs done. Just last week, a client told us that the apartment she was relocated from about a year and a half ago because of excessive water damage and mold continues to sit vacant and untouched.

City Council cannot allow the findings of the PNA to justify NYCHA's inaction. Failure to maintain habitable apartments is a self-fulfilling prophecy: the longer NYCHA delays in preparing these apartments, the longer it misses out on collecting rent from potential tenants. It is NYCHA's duty to provide safe and affordable housing and it is this City's responsibility to make sure NYCHA fulfills that obligation.

Conclusion

We implore this City Council to mobilize and appropriate the money to fund NYCHA adequately, to invest in our public housing residents, and to provide the ongoing guidance, accountability, and oversight required to ensure that NYCHA does not evade its responsibilities leaving public housing residents to suffer the consequences. We strongly urge this Council to act now in collaboration with the state and federal governments to fully fund Section 9 and ensure that no public housing tenant in New York City has to compromise their rights to keep their home for their rights to a habitable home. We also urge this Council to provide oversight and guidance to ensure that the PNA is not used to justify NYCHA's failure to meet its obligations to individual residents in need of repairs, or as an excuse for allowing apartments to lay vacant for years. Thank you for your attention to this urgent issue.

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