

**Testimony of Steven W. Lawitts
Acting Commissioner
New York City Department of Environmental Protection
at a hearing of the New York City Council
Committees on Finance and Community Development
concerning Intro. 1071/2009 - In Relation to the Sale of Water Liens
Council Chambers, City Hall
Monday, October 19, 2009**

Good morning, Chairs Vann and Weprin and Members of the Committees. I am Steven Lawitts, acting commissioner of the New York City Department of Environmental Protection (DEP). Thank you for the opportunity to present testimony on Introduction 1071 of 2009, which proposes to amend certain provisions of Local Law 68 of 2007 that authorized stand-alone sales of liens for overdue water and sewer charges.

Through the leadership of Mayor Bloomberg and Speaker Quinn, and in the spirit of cooperation with the Council, including Chairmen Weprin and Gennaro, DEP was able to achieve the critical goal of enhancing revenue collection by – among other things – modifying the existing lien sale authority to include the stand-alone sale of water liens. This important change was accomplished in the context of the transformation of the Bureau of Customer Services (BCS), the part of DEP that is responsible for issuing and collecting water and sewer bills.

But, that said, with many of our fellow New Yorkers and residents of communities across the country struggling to manage in these difficult financial times, I can understand why anything that appears to apply additional financial pressure must be carefully scrutinized to ensure that it is fair, and that it allows every possible protection for those who are under the

greatest financial burden. I understand and sympathize with the sentiments behind this bill, but the provisions that seek to lengthen the delinquency notice period and raise the delinquency threshold, though well-intentioned, will very likely encourage non-payment and increase delinquency amounts, consequences that will increase the burdens on delinquent and timely rate payers alike.

My testimony will recap why enhanced enforcement tools such as lien sale are so critical; summarize some of the key provisions we already have in place to protect the most vulnerable property owners; and provide a response to the provisions of Intro 1071.

In considering Intro 1071, however, it is important to note that comparatively few liens are actually ever sold. In fact, of the 16,416 accounts placed on the 90-day Lien Sale list in 2009, only a small proportion – 2,614, or less than 16 percent – were actually sold.

These numbers, considered with the revenue collection numbers, confirm that the lien sale and our shut-off program for single family homes are effective because they incentivize people to pay their bills or to enter payment agreements before a lien is sold, or service is terminated. As the Council knows, the bulk of revenue generated by the lien sale legislation that was enacted in 2007 comes not from actual lien sales, but from publication of the 90-day list, which puts property owners on notice to take steps to address an overdue account. DEP has conducted two lien sales, one in FY2008 and one in FY2009, which together generated \$185 million prior to the sale as well as another \$81.6 million in Payment Agreements. Only \$35.9 million worth of charges were sold in the actual lien sales. We believe

– and the numbers demonstrate – that the mere fact that DEP began stronger enforcement has resulted in most account holders paying before individual enforcement actions are completed. This is true for the lien sale and for service termination.

In crafting Local Law 68 of 2007 the Council and the Administration took pains to incorporate features that protect our most vulnerable citizens and preserve home ownership. For liens based on property taxes, the legislation excludes from the lien sale all Tax Class I properties owned by senior-citizen, disabled and low-income homeowners who meet the criteria for the Senior Citizen Homeowners' Exemption (SCHE), the Disabled Homeowners' Exemption (DHE) or the New York State Personal Income Tax (PIT) circuit-breaker credit. For liens based on water and sewer charges, the legislation excludes all single-family properties in Tax Class I, as well other Tax Class I properties that are receiving SCHE or DHE exemptions or the PIT circuit-breaker credit.

Local Law 68 also provided for a longer lien sale notification period, extended from 60 to 90 days. That extra month allows property owners who are eligible for the lien sale additional time to obtain information, talk to DEP or the Department of Finance (Finance), or make financial arrangements that might allow the property to be withdrawn from the lien sale.

Local Law 68 also provided for an Ombuds Unit. That unit is responsible for providing special assistance to all account holders facing lien sale and

undergoing the lien sale process. The Ombuds Unit also hears dispute cases as part of DEP's expanded dispute resolution process.

In addition, the Ombuds Unit oversees the work of the Safety Net Referral Program, which uses the existing network of City agency and not-for-profit programs, including the Home Energy Assistance Program (HEAP); the Senior Citizen Homeowners' Exemption, the Weatherization Assistance Program, and HPD's newly launched Center for New York City Neighborhoods, which provides extensive financial counseling and legal services to homeowners affected by the national mortgage and predatory lending crisis. In making significant changes in our billing, collection, and customer service operations, we employed a range of efforts to make it easier for account holders to settle overdue bills.

Beyond the protections afforded in Local Law 68, DEP deletes from our lien sale lists and collection actions those properties that are in bankruptcy or in the first stage of a foreclosure proceeding. We are able to screen these properties out by cross-checking our lien sale lists with the relevant bankruptcy and foreclosure lists. This has proven to be an appropriate and effective safety valve and largely avoids water and sewer liens from becoming the tipping point in a difficult personal budget situation. We removed from the lien sale list and chose not to pursue termination of service for 1,878 properties in a foreclosure proceeding. Unfortunately that number has increased from 816 in 2008. These numbers confirm that screening for bankruptcies and foreclosures will continue to be helpful to this group.

As you know, we have also partnered with Council Members, other elected officials and community groups to create opportunities for DEP staff to meet one-on-one with customers who have a delinquent account, or who just have general questions. We greatly appreciate the cooperation of Members in co-hosting these events.

Before moving to the specifics of the bill, I would like to briefly summarize our progress on two significant structural changes to billing and revenue collection – Automated Meter Reading and the Customer Information System.

Installation of the AMR system is going well. To date we have installed 104,655 meter transmitter units (MTU), which replace the familiar black meter-reading devices on the outside of most buildings, eliminating the need for an on-site reading and providing real-time information. Installed MTUs are functioning at a 98% accuracy rate. Approximately 900 more units are being replaced daily by our contractors citywide. And 274 of the approximately 330 rooftop receivers - 83% - have been installed and are operating.

As a result of all these efforts, we continue to increase billing accuracy, resolve disputes more expeditiously, improve and enhance our customers' experience with managing their accounts, and we have helped thousands of our most chronically delinquent customers to become current with their water bills and help to ensure that they avoid delinquency moving forward.

DEP will shortly choose a vendor that will provide for the complete replacement of our Customer Information System. The new system will be a state-of-the-art integrated system that will perform billing, payment tracking and financial reporting. This new system will support a full array of on-line services that we believe will be welcome by our customers.

We have reviewed Intro 1071, and to the extent that it seeks to provide account holders with more information and assistance, we will certainly work with you to do so. With some modifications, I think we can do several of the things you have requested. I do question, however, whether those things need to be done through legislation. Some of the other provisions, however, especially extending the lien sale eligibility timeline, are extremely problematic and would, I believe, be injurious to the water and sewer system, to our 838,591 rate payers as a group, and ultimately to those individuals who have fallen a year behind. Our experience shows that it is much easier to constructively work with an account holder when he or she is no more than a year behind; the longer the balance builds the larger the problem.

It is important to remember that when a property owner is exempted from the lien sale, the practical effect is that the Water Board foregoes revenue it had projected to collect from that owner for services the Board provided. But the need for that revenue doesn't disappear. That revenue is part of the Board's projections for the amount of money it needs to pay the costs of the water and sewer system: salaries, pensions, and health care for employees; debt service; payments to contractors; and bills for energy, chemicals, taxes and rent. Pursuant to the statutes, financing agreements and bond covenants

that govern the operation of our system, the Water Board must set a rate that covers all these costs. That means that the balance of unpaid accounts is passed along to other customers in the form of higher rates the following year. If the City allows a delinquent property owner to accrue larger balances we are imposing a bigger burden on that property owner's neighbor – very often someone who is also struggling to meet his or her financial obligations in difficult times.

I will address first the provisions that we do not consider problematic, although we may want to discuss further whether an administrative solution is more desirable than a statutory one as a way to achieve the goal. The bill proposes to require DEP and Finance to identify persons eligible for DHE/SCHE/Circuit Breaker tax exemptions and inform them of their eligibility. Last year, in response to a mailing to all customers, DEP and Finance received completed applications from 300 additional account holders who were eligible for exemption. We can certainly do additional mailings and outreach events and explore ways to better identify and inform property owners who are not currently taking advantage of existing tax exemptions, which also serve to exclude them from a water-only lien sale. However, no change in law is required to create new outreach efforts to let people know the categories of properties for which property tax exemptions are available.

The bill also suggests mailings to property owners with lien sale process information, exemption information, and relevant contact information. DEP, working with Finance, can certainly consider more frequent mailings or other communications that would get to property owners the information

they need about lien sales. But, we do believe that quarterly mailings run the risk of becoming excessive and being quickly discarded by property owners.

DEP could also accommodate the provision exempting two- and three-family homes receiving Enhanced STAR from water-only and tax liens. The Enhanced STAR program partially exempts the primary residences of senior citizens (age 65 and older) with yearly household incomes not exceeding the statewide standard from school property taxes. The current lien sale authority already excludes from the lien sale homeowners receiving disability-related or age-related property tax exemptions. Approximately 40,000 owners are exempt under DHE/SCHE; their total arrears are \$7.5 million.

Adding the Enhanced Star exemption would exclude fewer than 24,000 accounts and increase current arrears by another \$2.4 million. The veterans' exemption excludes 22,982 properties with delinquent charges of \$2.1 million. The owners who apply for these exemptions are also generally people who pay their bills, and seniors tend to use very little water and have low bills. These added exemptions would not result in an alarming diminution in potential revenue. However, like any other action to create exemptions, Intro 1071 would have the impact of requiring other users to pay for payments lost under these exemptions.

We are concerned about the provision extending the lien sale notice period. As I mentioned before, extending the lien-sale notice period to 90 days has been helpful by giving customers more time to pursue payment options and assistance. However, we believe that extending the lien sale period from 90

to 120 days may have the negative effect of making the prospect of lien sale more remote and less likely to prompt action. DEP's experience is that most property owners respond to the lien sale notices in the last 15 days before the lien sale. Now, the 90-day notice goes out in February notifying property owners that their lien could be sold in May. Most property owners come to DEP offices during late April or early May to clear up the delinquency. Sending lien sale notices out in January probably will not have any effect on the number of liens sold but may unfavorably dilute the function of the notice as an alert and call to action.

Finally, increasing the delinquency threshold from one to three years could have a significant negative impact on the system. In fact, it has the potential to undermine much of the progress that has been made over the last two years. Allowing property owners to become more delinquent before noticing them that the lien on their house is salable is not a solution to the problem of property owners who do not pay their water and sewer bills. Ultimately, it is probably no service to the individual customer to allow him or her to ignore this financial obligation and shift the burden of it to someone else. The lien sale list does not create the liens; the underlying delinquency creates the lien. Keeping the lien off the sale list does not make the underlying charges disappear; they just grow larger in most cases.

I should add that the danger of incentivizing delinquency in water and sewer charges arises, in part, from the fact that they are variable charges. Because they are variable, banks and mortgage holders do not automatically collect and pay them as they do a fixed charge, like real estate charges.

If DEP has to wait three years for the lien to “ripen,” that means two additional years of delinquency before the homeowner is alerted that she or he has a significant problem. It also represents two more years of accruing charges that will have to be paid. Because approximately 92% of the properties that are placed on the Lien Sale list resolve their delinquency before the lien sale actually occurs we know that property owners can put down a deposit and enter into payment agreements once they confront the problem. Resolving the delinquent charges and removing the property from the Lien Sale list is a better solution in many cases than simply ignoring the problem for another few years.

Thank you for the opportunity to testify and I would welcome the opportunity to continue a conversation with members on additional ways to provide assistance and information to New York City water and sewer customers. I would be glad to answer any questions.

Class 1 Water Only Liens with a Value of Less Than \$5,000

By Council District

Comparison of Properties on the 90 Day Notice vs Properties on the Final Sale

Council District	90 Day Notice				FINAL Sale				Difference	
	Count	Rank	Median	Sum	Count	Rank	Median	Sum	Count	Count %
1	0	51	\$0	\$0	0	45*	\$0	\$0	0	N/A
2	2	47*	\$2,030	\$4,060	0	45*	\$0	\$0	2	100%
3	4	45*	\$2,894	\$11,054	0	45*	\$0	\$0	4	100%
4	1	49*	\$2,401	\$2,401	0	45*	\$0	\$0	1	100%
5	1	49*	\$2,424	\$2,424	0	45*	\$0	\$0	1	100%
6	2	47*	\$3,853	\$7,707	0	45*	\$0	\$0	2	100%
7	14	43	\$2,323	\$35,297	1	43*	\$2,916	\$2,916	13	93%
8	7	44	\$3,524	\$26,003	3	42	\$3,789	\$10,684	4	57%
9	16	42	\$2,736	\$47,898	1	43*	\$1,780	\$1,780	15	94%
10	4	45*	\$2,450	\$9,331	0	45*	\$0	\$0	4	100%
11	87	27	\$3,306	\$285,733	9	28*	\$3,898	\$33,310	78	90%
12	333	8	\$3,119	\$1,039,134	64	2	\$3,530	\$219,663	269	81%
13	170	15	\$2,979	\$511,883	34	11	\$2,991	\$106,317	136	80%
14	49	39	\$3,402	\$165,176	9	28*	\$3,957	\$33,349	40	82%
15	142	19	\$3,216	\$457,666	23	15	\$3,786	\$83,927	119	84%
16	80	28	\$3,478	\$271,227	11	26	\$3,519	\$39,192	69	86%
17	97	24	\$3,456	\$325,157	10	27	\$3,800	\$37,043	87	90%
18	168	16	\$3,003	\$514,446	27	13	\$3,266	\$87,449	141	84%
19	79	29*	\$2,831	\$226,563	9	28*	\$3,808	\$33,897	70	89%
20	34	41	\$2,780	\$97,399	4	41	\$1,825	\$7,708	30	88%
21	232	13	\$3,450	\$784,720	25	14	\$3,264	\$79,540	207	89%
22	57	37	\$2,544	\$155,610	5	40	\$2,432	\$12,640	52	91%
23	61	35*	\$2,944	\$186,027	9	28*	\$3,273	\$29,226	52	85%
24	68	32*	\$3,113	\$221,697	7	35*	\$3,969	\$26,111	61	90%
25	93	25	\$3,329	\$307,118	13	21*	\$4,053	\$52,650	80	86%
26	61	35*	\$2,972	\$192,613	12	23*	\$3,390	\$40,277	49	80%
27	381	4	\$2,601	\$1,066,226	43	5	\$2,624	\$124,632	338	89%
28	346	7	\$2,913	\$1,030,716	39	8	\$3,524	\$134,842	307	89%
29	56	38	\$2,890	\$168,690	9	28*	\$2,505	\$27,479	47	84%
30	153	17	\$2,984	\$472,531	12	23*	\$2,604	\$35,488	141	92%
31	457	2	\$2,800	\$1,333,818	55	3	\$3,111	\$173,270	402	88%
32	285	11	\$3,009	\$873,918	37	9	\$3,711	\$132,480	248	87%
33	47	40	\$2,870	\$142,926	6	38*	\$2,924	\$18,647	41	87%
34	150	18	\$3,217	\$464,005	17	18	\$3,539	\$56,871	133	89%
35	126	21	\$2,704	\$356,616	9	28*	\$2,694	\$24,726	117	93%
36	433	3	\$2,921	\$1,290,353	41	7	\$3,196	\$135,515	392	91%
37	604	1	\$3,168	\$1,931,626	70	1	\$3,381	\$241,536	534	88%
38	79	29*	\$3,243	\$250,380	12	23*	\$3,734	\$44,163	67	85%
39	91	26	\$2,797	\$273,710	7	35*	\$2,446	\$20,098	84	92%
40	140	20	\$3,078	\$426,070	16	19	\$3,245	\$55,719	124	89%
41	324	9	\$2,869	\$966,769	32	12	\$3,172	\$100,257	292	90%
42	367	5	\$2,924	\$1,098,091	35	10	\$3,320	\$116,565	332	90%
43	71	31	\$2,999	\$219,161	9	28*	\$3,509	\$31,838	62	87%
44	116	22	\$2,895	\$354,517	7	35*	\$3,271	\$23,822	109	94%
45	239	12	\$2,912	\$727,274	20	16*	\$3,057	\$59,846	219	92%
46	364	6	\$2,901	\$1,087,423	42	6	\$3,300	\$139,441	322	88%
47	68	32*	\$2,864	\$199,991	14	20	\$3,044	\$44,967	54	79%
48	63	34	\$2,960	\$193,355	6	38*	\$4,096	\$22,422	57	90%
49	316	10	\$2,829	\$921,815	51	4	\$3,233	\$162,098	265	84%
50	102	23	\$2,826	\$301,254	13	21*	\$3,212	\$43,031	89	87%
51	173	14	\$2,576	\$479,235	20	16*	\$3,271	\$66,537	153	88%
CITYWIDE	7413		\$2,955	\$22,518,815	898		\$3,299	\$2,973,967	6515	88%

Count: Number of properties in that district with a water only lien of a value less than \$5,000.
 Rank: Rank of the district by count. The district with the highest number of liens in that category is number 1, the next highest is number 2, etc.
 Median: The median average lien amount in that district.
 Sum: The sum total of all the water only liens with a value of less than \$5,000.

* Tied with another District.



NEWS

Office of the
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William C. Thompson, Jr.



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FOR IMMEDIATE RELEASE:

October 19, 2009

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THOMPSON: INTRO 1071-A WILL HELP PROTECT OUR MOST VULNERABLE HOUSEHOLDS

Deputy Comptroller for Budget Marcia Van Wagner, representing New York City Comptroller William C. Thompson, Jr., provided testimony today in support of Proposed Intro 1071-A, The Sale of Water Liens, at a joint hearing of the New York City Council Finance and Community Development Committees.

The proposed change would improve upon the water lien sales program by broadening protections for homeowners, for whom the past year has brought little good news.

The testimony is below:

*Testimony of Deputy Comptroller Marcia Van Wagner at a meeting of the New York City Council
Finance and Community Development Committees - October 19, 2009*

Good morning and thank you, Chairman Weprin, Chairman Vann and members of the Finance Committee and the Community Development Committee, for inviting Comptroller Thompson to speak today about Intro 1071-A regarding the sale of water liens. He is unable to appear here himself and sends his regrets.

Almost exactly two years ago, I appeared before you to express Comptroller Thompson's concerns regarding proposals by the Department of Environmental Protection to make more stringent their procedures for collecting water rates. These proposals were spurred by a persistent shortfall in collections of water and sewer fees compared to the growing expenses of the water system. The Comptroller was concerned that the DEP's proposals were not designed in a sufficiently sensitive manner given the many stresses on New York City households stemming from a softening economy and the foreclosure crisis.

At that time, I conveyed the Comptroller's belief that an appropriately-designed water lien sales program was a sensible approach to improving collections, provided that the relevant accounts were accurate. My testimony also noted that lien sales are most appropriate for multi-family dwellings where resorting to water-shutoffs would unfairly penalize innocent tenants. In the end, the Council agreed that independent water lien sales were an acceptable enforcement mechanism.

Intro 1071-A improves upon the water lien sales program by broadening protections for homeowners, for whom the past year has brought little good news. It exempts homeowners receiving Enhanced STAR benefits; allows homeowners more time to address outstanding water bills, both by extending the public notice period and by limiting eligible accounts to those unpaid for three years; and requires that homeowners receive more timely and complete information regarding delinquent accounts and the consequences of lien sales. Furthermore, it requires the DEP to be proactive in identifying those homeowners eligible for home exemptions that would make them ineligible for inclusion in a lien sale. The Comptroller fully supports these measures.

The water system's fiscal health is also of great concern to Comptroller Thompson. Analysis by the City Council finance staff suggests that the impacts of these provisions on DEP collections will be minimal.

Indeed, over the past several years Comptroller Thompson has advocated for several ways to improve the fiscal health of the water system. Chief among these, as you know, is his proposal that the City rebate the Water Board's rental payments back to the water system, resulting in containment of water and sewer rate increases and moderation in the growth of the system's crushing debt service costs.

The Comptroller has also urged the Water Board to use the current review of the system's rate structure—which they initiated in response to his advocacy—as an opportunity for honest and thoroughgoing reform of the way costs are distributed among users of the system. Furthermore, the specter of gas drilling in New York City's watershed threatens to reverse the progress the City has made in preserving the quality of its west-of-the-Hudson water supply. The Comptroller along with many other officials has called for a ban on drilling in the watershed.

Because the members of the Water Board who in 2008 were most vocally in support of ratepayer equity and the ban on gas drilling in the watershed appear to have been pushed off the Board, the Comptroller also initiated a bill, introduced by Assemblyman Brennan and Senator Perkins, that would change the composition of the Water Board to lessen the Mayor's lock on its proceedings.

The challenges facing the water system are enormous and touch on every person in our city. One of the key issues as we address these challenges is that we not finance the system by placing unmanageable burdens on our most vulnerable households. Intro 1071-A is one step in achieving this balance.

Thank you for allowing the Comptroller to share his thoughts on this important piece of legislation. I am happy to answer any questions you may have.

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TESTIMONY OF

MARCIA VAN WAGNER
Deputy Comptroller for Budget

NEW YORK CITY COMPTROLLER'S OFFICE

Before the

NEW YORK CITY COUNCIL
Committee on Finance
Committee on Community Development

Proposed Intro 1071-A
Sale of Water Liens

October 19, 2009

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drilling in New York City's watershed threatens to reverse the progress the City has made in preserving the quality of its west-of-the-Hudson water supply. The Comptroller along with many other officials has called for a ban on drilling in the watershed.

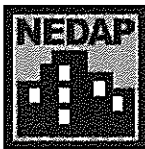
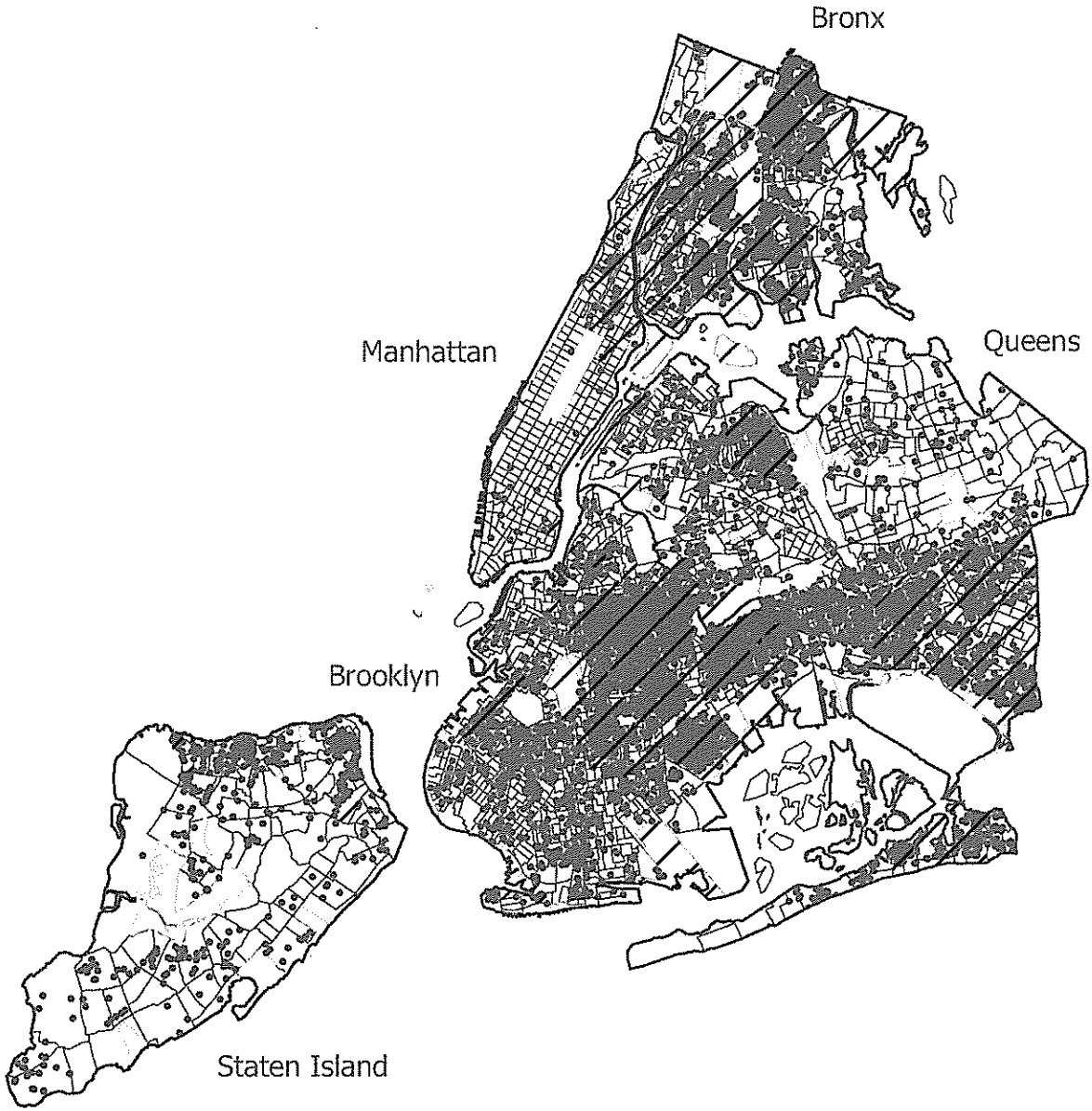
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Water-Only Liens 2009 NYC Tax Lien Sale

- /// Population > 50% Black or Hispanic
- 1 Dot = 1 Home in Tax Lien Sale*



Neighborhood Economic Development
Advocacy Project (NEDAP)
(212) 680-5100 | www.nedap.org
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**based on 30 Day Notice List, NYC Tax Lien Securitization,
water-only liens on 1-4 family homes, April 2, 2009*

Data Sources: NYC Department of Finance; U.S. Census (2000)

Testimony before the New York City Council Finance Committee
Intro 1071—A local law to amend the administrative code of the City of New York
in relation to the sale of water liens
October 19, 2009

Thank you, Council Member Weprin for conducting this important hearing, Council Member Vann for your leadership and support of tax lien reform and all of the Council Members who are co-sponsors of Intro 1071—A local law to amend the administrative code of the city of New York in relation to the sale of water liens. I am April Tyler, State and Local Campaigns Coordinator, 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 2009 lien sale list, the sale of both property tax and water/sewer liens is a massive problem. The liens that were sold are disproportionately concentrated in black and brown communities in the city—those already hard hit by predatory lending, foreclosure and the worsening economy. NEDAP, and other organizations around the city, receives calls from stressed homeowners on a weekly basis who had gotten a notice of tax lien sale and now we receive many calls from homeowners who are threatened with foreclosure because of a lien sale. Families who are struggling to stay afloat and make ends meet, should not have this additional burden placed on them. Amending the administrative code of the City of New York in relation to water liens is certainly a good first step to assist struggling homeowners preserve their homes.

NEDAP supports the amendments included in Intro 1071 that would:

- exempt a broader range of senior citizens and low-income homeowners from water lien sales;
- require the Commissioner of Finance to try to identify elderly, disabled and low-income homeowners who are eligible for such exemptions;
- give the Commissioner discretion to exempt such homeowners from water lien sales;
- extend to three years the minimum period of partial or full nonpayment of tax liens before a sale may occur;
- extend to 120 days the notice period required before a tax lien may be sold;
- require the Commissioner to provide homeowners written information on the tax lien sale process and the exemptions available each quarter.

Your efforts to limit the damage caused by water lien sales are commendable, but we think that further changes are required to protect homeowners most at risk of losing their homes and equity because of a lien sale.

The exemptions from the tax lien sale must be expanded to include all owners of one- to four-family homes. Currently, homeowners must self-identify if they are eligible for an exemption. This means that many homeowners who may be eligible are not identified and therefore have the lien on their property sold. This costs the homeowner more money and can lead to foreclosure. If all one-to four-family homes were exempted from the lien sale, the City could still collect the arrears by entering into affordable payment agreements with homeowners.

All exemptions should apply not only to water liens, but also to property tax liens. Many of the exotic loan products, which were targeted to African American and Latino communities do not escrow real estate property taxes. Homeowners were given the impression that they had a low-cost loan, but when

the separate property tax bill came, they were unable to afford both the mortgage and tax payments and therefore built up arrears. Likewise, many homeowners are unpleasantly surprised when they receive outrageous water bills. Not to mention a 14% increase in rates two years in a row! Both categories of lien sales have had devastating effects on struggling homeowners. Given the fact that the enabling legislation will sunset in 2010, they should be considered jointly.

Should exemptions of all one- to four-family homes not be established, then homeowners who are identified as eligible for exemptions must be removed from the lien sale pool. It has been NEDAP's experience that the overwhelming majority of homeowners who may be eligible for exemptions are unaware of the exemptions and therefore of their eligibility. Take Mr. W a homeowner in Brooklyn. He and his wife have owned their home for over 10 years. He is now retired, but worked for the city. His wife is also retired. They should have qualified for the senior citizen's exemption, but didn't know about it. Because of illness they were unable to pay their property tax bill and went into the lien sale. They are now facing foreclosure—and the \$15,700 that they owed has now jumped to \$27,000 on a three year debt! Luckily, they are in the process of getting a loan through NEDAP's Foreclosure Prevention Gap Loan Program and will be able to save their home. This change would ensure consistent treatment of vulnerable homeowners and will simplify administration of the lien sale program by eliminating the need for a case by case review.

The minimum debt owed prior to a lien being sold should be raised to \$5,000. Increasing the minimum will allow the homeowner a greater chance to seek resolution to the debt before facing the risk of losing his or her home.

The amended code must contain a remedy for homeowners whose liens are erroneously sold. In order to prevent irreparable harm to homeowners in this situation, the code must provide a means for the City to defect erroneously sold liens at no cost to the homeowner.

NEDAP worked extensively with many organizations, community boards and elected officials in early 2009 to inform homeowners of the lien sale. We attended over 45 meetings within a four month period to alert communities and homeowners of the upcoming sale, possible exemptions and how to apply if they were eligible. Despite our efforts (and the efforts of DOF and DEP staff) there were still thousands of tax liens sold. Over 4,000 were stand alone water liens on one- to three-family homes. We are regularly contacted by homeowners who are facing foreclosure because of the lien sale. We have been able to help some of them through our Foreclosure Prevention Gap Loan Program which was created to help homeowners seeking affordable loan modifications but who needed a small sum of money to complete the transaction. Since the last lien sale we have been getting more and more calls from advocates and homeowners with unaffordable tax liens bills which threaten their continued ownership.

With so many homeowners and neighborhoods suffering during this economic crisis, the same homeowners and neighborhoods that are reeling from abusive loans and foreclosure. It is short sighted to sell liens to investors and enrich Wall Street at the expense of our Main Streets. Thank you.

Hearing of the New York City Council Committee on Finance

Int. No. 1071-A

Monday October 19, 2009

New York, New York

Testimony of Erica Gilles

Good Morning. My name is Erica Gilles and I am a paralegal in the Foreclosure Prevention Project at South Brooklyn Legal Services. Thank you for inviting South Brooklyn to speak today on the proposed local law to the administrative code in relation to the sale of water liens.

For more than 10 years, the Foreclosure Prevention Project has represented low- and moderate-income homeowners at risk of losing their homes because of abusive lending practices. Through litigation and advocacy we have been able to save hundreds of homeowners from foreclosure.

New York City is facing a catastrophe in its low- and middle-income communities as record numbers of families are at risk of losing their homes, many as a result of predatory subprime lending. The crisis is devastating homeowners and destabilizing neighborhoods. Exacerbating the impact of the subprime lending crisis are the many homeowners who are being threatened with foreclosure because of past due property tax and water liens.

In the past year, our office has received dozens of calls from homeowners, mostly elderly, who have been threatened with foreclosure because of a tax or water lien. Many should have been exempt from the lien sale but either did not receive proper notification or did not understand the notices sent to them. Most of the homeowners who have reached out to South Brooklyn paid off their mortgage long ago but struggle to meet their current expenses on a limited income. Others fell behind because they thought their tax and water bills were being paid by their mortgage company. Excluding escrow payments from monthly mortgage bills was one way unscrupulous lenders misled vulnerable homeowners into believing their payments were affordable to them. These homeowners, struggling with sub-prime and high-cost loans, often discover too late that their taxes are not being paid. Once tax and water liens are sold to companies like Xspand, homeowners have a very difficult time avoiding foreclosure. Xspand routinely charges 18% interest on the debt owed and, in our experience, refuses to negotiate settlements with homeowners who are unable to pay the full amount of the debt and interest claimed to be owing.

I would like to give you two examples: Mr. G is an 84 year old homeowner who purchased his home in 1970 and paid off his mortgage in 1986. He suffers from severe cataracts in both eyes, and depends on rental income from the store that occupies the ground floor of his property. When the store owners defaulted on their rent payments for

over a year, Mr. G concomitantly fell behind on his water and property taxes. Mr. G received no notice prior to the sale of his property tax lien last year, and only recently received a letter notifying him that he might be eligible for the property tax exemption. The current tax lien holder, Xspand, has been charging him 18% interest on the debt, which has accrued to approximately \$38,000. Xspand may soon move to foreclose on the property, leaving this elderly homeowner vulnerable to losing his home of almost 40 years. In another case, the homeowner, Ms. L, was unexpectedly diagnosed with a terminal illness and became suddenly unable to work. Ms. L, who had lived with her husband in their home for over 20 years, adjusted to living entirely off her government disability payments and her husband's small social security. Given their limited income, Ms. L and her husband began to fall behind on their property and water payments. However, they retained ownership of their home and succeeded in remaining current on their relatively small mortgage. A few years after she was diagnosed, Ms. L received a letter informing her that if she did not make a payment of almost \$9,000 within less than three months, her tax lien would be sold to a private debt collector. Further, if Ms. L was not able to pay her debt in full, the collector would have the right to foreclose on the property, forcing Ms. L out of her house to recover a debt of barely 10% of the home's value. Ms. L contacted SBLs and we were able to assist her to request and obtain an exemption from the tax lien sale due to her age and terminal disability. Without our assistance the lien would likely have been sold and her debt risen exponentially.

We applaud the proposed amendments to extend to three years the minimum period of partial or full nonpayment of tax and water liens before a sale may occur; extend to 120 days the notice period required before a lien may be sold; and require the Commissioner to provide homeowners on a quarterly basis with written information on the tax lien sale process and the exemptions available. We urge the Council to provide these increased protections to homeowners at risk of tax, as well as water, lien sales and also further amend the local law to provide even greater protections for homeowners struggling with tax and water arrears.

First, the law must require that homeowners who are identified as eligible for an exemption under the law be removed from the lien sale list. This change is necessary to ensure consistent treatment of vulnerable homeowners and will simplify administering the tax lien sale program.

Second, we urge the council to consider exempting all owner-occupied one- to four-family residences. From a strictly pragmatic perspective, this step simplifies the work of the Department of Finance and Department of Environmental Protection, which otherwise must devote substantial time and resources to determining which homeowners fall within the discrete exemptions set forth in the current code. Most importantly, to broaden the scope of exemption is an equitable solution that will alleviate the crisis in homeownership currently confronting our communities. The efficiency of this approach, combined with the substantial benefit that New York City will gain from improved stability in home ownership, will in all probability outweigh any costs associated with making more homeowners exempt from tax lien sales.

Third, we recommend that the code be amended to raise to \$5,000 from \$1,000 the minimum tax lien debt required before the lien can be sold. Increasing the minimum will allow homeowners the opportunity to seek a resolution to the debt before being faced with the risk of losing his or her home and equity.

Finally, the amended code must contain a remedy for homeowners whose tax liens are erroneously sold. Our office has seen a number of cases of homeowners served with a tax or water lien foreclosure but who had proof they had paid their bills; others who never received proper notice; and still others who should have been exempted from the lien sale. In order to prevent irreparable harm to homeowners in this situation, the code must provide a means for the City to reacquire erroneously sold tax liens so that homeowners may be put back in the position they would have been but for the erroneous sale.

We share your sense of urgency in addressing this critical issue. Creative solutions are required to manage the financial crisis that threatens the stability of our communities. We thank you again for inviting us to speak today and look forward to working with the Council to prevent these unnecessary foreclosures.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1071 Res. No. _____

in favor in opposition

Date: 10/19/09

(PLEASE PRINT)

Name: Erica Jo Gilles

Address: 105 Court St Brooklyn NY 11220

I represent: South Brooklyn Legal Services

Address: same

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in favor in opposition

Date: 10/19/09

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Name: Deborah Howard

Address: 238 Adelphi St Brooklyn NY

I represent: Pratt Area Community Council

Address: 202 Dekalb Ave. Brooklyn NY

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Name: April TYLER

Address: 73 Spring St

I represent: NEDAP

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(PLEASE PRINT)
Name: Ingrid Faria
Address: 460 Wostrand Ave, Bklyn.
I represent: Bridge Street Development
Address: 460 Wostrand Ave, Bklyn.

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Name: Marcia Van Wagner - Deputy Comptroller
Address: _____
I represent: _____
Address: _____

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Name: Joe Sington D.C.

Address: 5917 Junck Blvd

I represent: NYC DEP

Address: _____

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 in favor in opposition

Date: 10/19/09

(PLEASE PRINT)

Name: Steven W. Lavitts

Address: Atty Commissioner

I represent: NYC Department of Environmental

Address: Protecto

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