

Report of the Lien Sale Task Force

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Members

Co-Chair Peter Hatch, Office of the Mayor
Co-Chair Council Member Julissa Ferreras-Copeland
Council Member Donovan Richards
Council Member Deborah Rose
Council Member Robert Cornegy
Rebecca Chasan, City Council Finance Division
Jeffrey Shear, Department of Finance
Alan Anders, Office of Management and Budget
Christopher Allred, Department of Housing Preservation and Development
Joseph Murin, Department of Environmental Protection

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I. Introduction

The sale of tax liens is an enforcement mechanism used in cities throughout the country. The New York City Tax Lien Sale program (the Program) originated in 1996 with the intent of improving real property tax compliance, and as a last-resort enforcement and collection mechanism for delinquent municipal charges. When taxes or assessments on properties within the City accrue from delinquent payments on property taxes, water and sewer bills, or other specified municipal charges, those debts become eligible for the Program and may ultimately be sold to a third-party, tax lien trust (the Trust) in a transaction known as the lien sale. After the sale, the Trust works to collect these debts to pay its bondholders, and in the very rare instance a resolution is not achieved, the Trust can use the State's foreclosure process as a final enforcement tool.

While the Program allows the City to restore some of the revenue lost due to tax delinquency, the goal of the Program is not, in fact, the sale of liens; rather, the goal is voluntary compliance with taxes before the sale, as demonstrated in the data presented below. Prior to the lien sale, the Program ensures a fair and equitable system of taxation in the City: that is, incentivizing property owners to pay their taxes on time, and ensuring that all taxpayers pay their fair share for municipal services. Reducing delinquency for municipal debt is a priority because nonpayment of taxes and other municipal charges means less money for critical City services and schools, and higher property taxes and water and sewer charges for complying taxpayers. Delinquency can diminish a neighborhood's property values and hinder development by holding parcels in legal and economic limbo.

At the same time, the City works to accommodate individuals facing economic hardship when appropriate through payment agreements and other mechanisms. The lien sale process also offers City government the opportunity to interact with property owners who are delinquent in their property or water and sewer charges prior to the lien sale; a major part of the process is meaningfully engaging with and educating those having difficulty paying these charges so that they understand their options.

The City Council and City agencies involved in the Program – the Department of Environmental Protection (DEP), the Department of Finance (DOF), and the Department of Housing Preservation and Development (HPD) – strive for every property owner noticed for the lien sale to pay what he or she owes, enter into a payment agreement, or qualify for an exemption that may remove that individual from the current or future tax lien sales. The success of these endeavors depends on adequate notification and outreach to property owners. The City sends multiple notices explaining how to resolve issues to be removed from a lien sale and provides direct outreach to encourage all owners to act before liens are sold. After liens are sold, the ability for property owners to enter into payment agreements or qualify for an exemption is restricted.

Over the years, improvements and reforms to the pre-sale portion of the Program have been enacted to address issues raised regarding outreach to property owners, the concentration and location of delinquent properties, and the inclusion of water and sewer-related charges in lien considerations. Similarly, a goal is to ensure that the Program incentivizes repayment without deepening the financial circumstances that may make payment challenging in the first place. At the same time, it is critical that any changes to the program do not undermine the incentive system that ensures equitable payment of property taxes and delivery of basic City services.

A. Scope and Effect of the Program in Recent Years

As currently configured, the Program has proven to be a very effective enforcement tool that has resulted in significant increases in the payment of delinquent tax receipts and, at the same time, an extremely low percentage of property foreclosures. Of the 18,843 liens sold in 2008-2011, only 322 or 1.7 percent of the liens resulted in a property foreclosure. Since 2008, the City has received an average of approximately \$480 million per year in property tax and water and sewer lien payments composed of (i) proceeds from the sale of liens to the Trust, (ii) residual receipts from the Trust not needed to pay off the bonds issued by the Trust; and (iii) more importantly, the tax and water and sewer payments received during the period from the 90-day notice to the date the liens are actually sold to the Trust. Based on the City's best data, it is estimated that \$350 to \$400 million is received annually during the period between the 90-day notice and the lien sale as payments on delinquent tax, water, and sewer, and other municipal liens during that period.

Proportion of Liens Foreclosed
Only 1.7 percent of the liens sold between 2008 – 2011 were foreclosed.

Water rates are one example of how the increased collection rates have a real impact on the operation of the City. Since water rates are set such that the revenue covers the expenses of running the City's water system, any decrease in expected revenue, such as those caused by increased delinquency, in turn necessitate increases in the water rate. This unfairly shifts the financial burden from a minority of delinquent customers to the majority of customers who pay their bills on time. Prior to 2008 when greater authority to sell water and sewer liens was legislated (see Section III. (A) Legislative History section), many delinquent customers perceived that there were no consequences for failure to pay their water bills. Since that time, DEP estimates that more than \$1 billion of costs would have had to be shifted to customers who have paid their bills on time through a significant increase in the water rate.

In addition, the Program has resulted in an extremely small number of property foreclosures. In each tax lien sale, only one lien relating to a property is sold. That lien may be composed of delinquent property taxes, delinquent water and sewer charges, and other charges. Since 2008, the number of lien sale candidates/properties included in the 90-day notice has averaged approximately 25,100. During that same period, the number of liens sold to the Trust has averaged about 4,600, or 18.3 percent of the liens noticed in the 90-day notice. During the period from 2008 to 2016, there were

approximately 41,400 liens sold to the Trust and, during the same period, only 354 properties were the subject of a foreclosure judgment and judicial auction. Of the 354 foreclosure auctions in that period, 196 of the properties were non-residential properties, including vacant land, garages, and warehouses, among other types of properties, and 158 of the properties were residential (an average of eighteen properties per year during the period).

The City’s goal is to make sure that property tax receipts, water and sewer system collections, and other lienable charges are sufficient to support the City’s current and future operations. Lien sale authority is an essential financial tool that not only provides needed revenue, but it also ensures that all building owners pay their fair share for the services that their buildings receive. Not renewing the lien sale authority would unfairly shift the financial burden from a minority of delinquent property owners to the majority of owners who pay their bills on time, pay their fair share, and would then have to pay even more because the City would no longer have its most effective financial enforcement tool.

II. The Lien Sale Task Force

In 2015, the City Council passed and the Mayor signed Local Law No. 14, which required the Mayor and the Council to form a temporary joint task force (the “Task Force”) to review and evaluate the Program in an effort to ensure that it is “fair, efficient and effective” and to present the findings of the Task Force in a report issued to the Mayor and the Speaker.

The Task Force includes five members appointed by the Mayor and five appointed by the City Council, as follows:

Table 1. Task Force Members	
Office of the Mayor	City Council
Co-Chair Peter Hatch, Office of the Mayor	Co-Chair Council Member Julissa Ferreras-Copeland
Alan Anders, OMB	Council Member Donovan Richards
Jeffrey Shear, DOF	Council Member Deborah Rose
Christopher Allred, HPD	Council Member Robert Cornegy
Joseph Murin, DEP	Rebecca Chasan

The Task Force held meetings on October 1, 2015, November 23, 2015, and January 28, 2016. At those meetings, the Task Force discussed areas in which the Program could be modified to address various issues and concerns, heard presentations from outside groups and advocates, and exchanged ideas and proposals. In addition, Administration and Council staff met on numerous occasions outside of the official Task Force meetings to review data and research questions proposed by the Task Force members.

The result of these efforts is the report and recommendations contained herein for submission to and consideration by the Mayor and the Speaker.

III. The Program Overview

A. Legislative History

The New York City Tax Lien Sale program was originally authorized by Local Law No. 26 of 1996 as a comprehensive plan to improve real property tax compliance by selling real property tax liens. The Program was developed due to declining property tax collections and the high cost of the City's *in rem* program. New York City was spending an average of \$2.2 million per property and approximately \$500 million per year to maintain and dispose of real property acquired through the *in rem* program.

Local Law No. 26 authorized the City to sell liens through December 31, 1997 and that authorization has been extended, at times with amendment, in 1997, 2000, 2001, 2004, 2006, 2007, 2011, and 2015.

The first major amendment to the Program was made by Local Law No. 36 of 2001. Prior to this amendment, water and sewer liens could not be sold if there was no qualifying real property tax lien on the property on the sale date. Certain taxpayers, after being notified of their property's inclusion in the lien sale, paid only the delinquent property taxes owed, leaving water and sewer charges unpaid with the associated liens then removed from the sale. Accordingly, the 2001 amendment allowed the sale of water and sewer liens on Class 2¹ (excluding residential cooperatives and condominiums) and Class 4 properties where there was a qualifying real property tax lien on the property at the time of initial notice even if the real property component was paid off by the lien sale date.

Local Law No. 68 of 2007 further expanded the City's authority to sell water and sewer liens by making them eligible for the lien sale even if there was never a qualifying real property lien on the property. This law also prohibited the sale of certain tax liens on residential properties owned by certain senior citizens, disabled or low-income homeowners, and water and sewer liens on any single-family Class 1 property or residential properties owned by certain senior citizen, disabled, or low-income homeowners. The new law also extended the initial notification period from 60 days to 90 days.

Local Law No. 15 of 2011 authorized the sale of liens for unpaid Emergency Repair Program (ERP) charges and Alternative Enforcement Program (AEP) charges. Local Law No. 15 also authorized the City to offer pre-sale payment plan agreements to delinquent taxpayers with quarterly or monthly payment terms with duration of up to ten years with no down payment requirement.

¹ See New York State Real Property Tax Law Section 1802 for definitions of the four classes of property.

B. How Does the Program Work?

Many people are confused about the exact nature of the Program. Some people think that the City is selling properties, while others think that the City is purchasing the properties itself. Neither is the case. The Program is an enforcement mechanism that may ultimately result in the sale by the City of the debts (not the properties) owed in an effort to collect unpaid taxes and municipal charges. This sale is to a Trust, which is set up and closely monitored by the City to ensure compliance with the trust documents. The Trust is tasked with resolving the outstanding debts in a professional, fair, but unambiguous manner, with the foreclosure process being a final, but necessary, tool in those efforts.

Currently, all unpaid real property taxes, water and sewer charges, and other City charges on property become liens on the day they become due and payable. However, they can be sold through the lien sale only when a certain dollar amount and time threshold is met. The criteria for inclusion in the lien sale are summarized in the below table.

Table 2. Lien Sale Threshold Criteria						
	DOF		DEP		HPD	
Property Type	Property Tax Debt		Water/Sewer Debt		Emergency Repair and Alternative Enforcement Program Charges***	
	Minimum Amount	Years Overdue	Minimum Amount	Years Overdue	Minimum Amount	Years Overdue
1-Family House	\$1,000	3	n/a*	n/a	n/a	n/a
2-3-Family House	\$1,000	3	\$2,000	1	\$1,000**	1**
Residential Condominium & Residential Cooperation	\$1,000	3	\$1,000	1	\$1,000	1
Housing Development Fund Corporation (HDFC) Rentals	\$5,000	2	\$5,000	2	\$5,000	2
Other Class 2 Properties (non-HDFC rentals 4+ Family)	\$1,000	1	\$1,000	1	\$1,000	1
Class 4 Properties	\$1,000	1	\$1,000	1	\$1,000	1

*Although the water/sewer debt may not be sold, DEP may report it to a credit reporting

agency if the charges remain delinquent.

**Only applies to 3-Family non-owner occupied homes in Alternative Enforcement Program.

***Only charges posted on or after January 1, 2006 may be included.

As of 2007, the sale of certain tax liens is prohibited for residential properties owned by certain senior citizen, disabled, or low-income homeowners, and water and sewer liens on any single-family Class 1 property or residential properties owned by certain senior citizen, disabled, or low-income homeowners as long as they receive one of the following exemptions:

Table 3. Qualifying Exemptions		
Lien Type	Property Type	Qualifying Exemptions
Property Tax Debt	All Class 1 property owners with qualifying exemptions	<ul style="list-style-type: none"> • Senior Citizen Homeowner Exemption • Disabled Homeowner Exemption • Circuit Breaker • Certain Veterans pursuant to Veterans Property Tax Exemption • Certain Active duty military personnel
Water & Sewer Debt	<ul style="list-style-type: none"> • All Class 1 owners of 1-family properties • Class 1 owners of 2- and 3-family properties with qualifying exemptions 	<ul style="list-style-type: none"> • Same exemptions as those for property tax debt

Once a tax lien on a property is sold, a mandatory 5 percent surcharge is added to the lien to fund Trust administrative expenses. In addition, noticing and advertising fees that are incurred before the lien sale are added to the liens included in the final sale. Interest on the lien continues to accrue and, in the event a foreclosure action is initiated, related legal and court fees are also charged.

When a property has liens that are eligible for the lien sale, the City notifies delinquent taxpayers multiple times via newspapers and letters that a lien on their property will be sold if it is not satisfied. There is a 90-day notice, a 60-day notice, a 30-day notice, and a 10-day notice.

At any time during this notification process, a taxpayer may pay the outstanding balance of the debt or enter into a payment agreement with the City in order to avoid inclusion in the lien sale. From February until the lien sale in May, the City, in partnership with local elected officials and community groups, holds numerous outreach events to provide the opportunity for lien sale candidates to ask questions, make payments, enter into payment agreements, and learn about property tax exemptions that may qualify them to be removed from the sale.

Sample Calendar from 2015 Sale:	
October 29:	Statutory Mailing to all Delinquent Taxpayers and Rate Payers
February 10:	90-Day Ad in Major Newspaper
February 10:	90-Day Mailing
March 10:	60-Day Mailing
April 1:	Current Property Tax Payment Due
April 10:	30-Day Mailing
April 27:	10-Day Publication and Mailing
May 14:	Last Day to Pay
May 15:	Sale Completed

If at the time of the announced sale date the outstanding debt has not been paid or a payment agreement has not been entered into, the City sells the tax liens to a Delaware statutory Trust created pursuant to Title 12, Section 3801 of the Delaware Code. The Trust only owns the liens, not the property. At this stage, the property owner still holds title and at any time may pay off the associated liens to the Trust.

After Rating Agencies examine the credit-quality of the liens that are collateralized, the Trust sells bonds to investors to pay the City a “cash advance” for its purchase of the liens.² The Trust then hires professional servicer(s) who attempt to collect all of the delinquent taxes and charges. After taxes and charges are collected sufficient to retire the Trust’s bonds, any residual collections are paid to the City.

If a property owner has not voluntarily redeemed their lien or entered into a forbearance agreement with the Trust within one year of the date of sale, the liens are subject to foreclosure. New York City tax liens are foreclosed in a judicial process in the same manner as a mortgage in accordance with New York State law. The foreclosure process can take two to three years to complete (or longer if the owner files for bankruptcy or contests the foreclosure process or if there are guardian or surrogate court issues). The property owner has the right to redeem the lien at any time prior to the court-administered auction of the property.

² The Trust’s bonds are issued as “private placements” under Rule 144(A) and Regulation D of the Securities Act of 1993. Bonds are sold exclusively to Qualified Institutional Buyers (QIBs) – typically insurance companies and institutional asset managers.

Most property owners who are notified of their eligibility for the lien sale satisfy their outstanding debt long before the foreclosure process. In fact, most of the property owners notified resolve their debt prior to the actual lien sale. In 2016, for example, of the 24,202 properties noticed at the 90-day notice point, only about 14 percent had liens sold in the lien sale. Moreover, in most cases, even if a property has liens sold in the lien sale, the property owner resolves the debt prior to foreclosure. Since 2005, fewer than 2 percent of properties with liens sold have been the subject of a foreclosure auction.

C. Policy Goals

The Program has been a very successful mechanism to collect outstanding property taxes, water and sewer charges, and other municipal charges. Voluntary compliance has greatly increased since the inception of the tax lien sale. Property tax delinquency has declined from an average of 4.4 percent in the three years before the first tax lien sale in 1996 to just 1.6 percent in Fiscal 2015. Today, each percentage point increase in voluntary compliance is worth approximately \$250 million.

The efficiency of the tax lien sale process is in part measured against the much more costly and time-consuming *in rem* process, which was the City's enforcement tool prior to 1996 and had the ancillary disadvantage of forcing the City to manage thousands of properties.

Over the years, the Program has been reformed to ensure necessary protections and equitable treatment for all taxpayers. Below is a description of the policy goals of the Program from the perspective of each of the agencies involved.

1. DOF

DOF is the City's revenue service and taxation agency. In that role, it administers the City's tax revenue laws fairly, efficiently, and transparently to instill public confidence and encourage compliance. The agency is responsible for valuing more than one million properties and collecting nearly \$35 billion annually in revenue. These revenues include not only City taxes, but also charges levied by other agencies such as HPD. As such, the agency plays a large part in administering the Program.

DOF's work in the lien sale is not simply revenue collection, but represents a comprehensive undertaking to ensure that owners whose properties are at risk for the lien sale are properly notified of their status. Efforts are made to be fair to those property owners who are unaware of their delinquency status or who cannot pay the entire amount due to financial circumstances. DOF therefore works to ensure that owners understand the debt resolution options available to them (such as payment plans and exemptions to those who qualify), process requests to allow new payment plans after defaults due to extenuating circumstances, process exemption applications, and respond to customer inquiries quickly and thoroughly so that owners may have their

properties removed from the lien sale even when approaching the City just before the deadline. The DOF's outreach efforts are marked by frequent communication in various formats and languages that are clear to the general public and customer service resources that meet customer demands.

Based in part on Task Force discussions throughout the process, DOF has already begun expanded efforts (further described in Section IV) to improve notification, outreach, and compliance. The following metrics indicate the success of DOF's efforts in administering the 2016 lien sale:

- ✓ The number of properties with liens in the initial tax lien sale pool at the 90-day notice mark decreased from 27,233 in 2015 to 24,202 in 2016, an 11.1 percent reduction in the number of liens noticed for sale.
- ✓ Despite the reduction in the number of properties in the lien sale pool as of the 90-day notice mark, the amount of outstanding debt collected prior to the date of the lien sale in response to outreach and lien sale warning notices increased from \$102 million in 2015 to \$133 million in 2016, a 30.4 percent increase in collection.
- ✓ Through enhanced communication and outreach, the total number of liens sold decreased from 4,228 in 2015 to 3,461 in 2016. In percentage terms, the portion of the lien sale pool that was ultimately sold declined from 15.5 percent in 2015 to 14.3 percent in 2016.
- ✓ DOF removed 55 properties from the lien sale in 2016 as a result of 58 extenuating circumstances requests. Only one such property was removed in 2015.

2. DEP

DEP is responsible for the City's water supply and sewer system, including providing drinking water to all New Yorkers, maintaining pressure to fire hydrants, managing storm water, and treating wastewater. All of the City's water related expenses – both operational and capital – are paid for with the money collected from the water and sewer charges that are billed to all City property owners and authorized annually by the New York City Water Board. DEP's stand-alone lien sale authority for seriously delinquent water and sewer charges is a critical enforcement tool that allows the City to keep water and sewer rates as low as possible, while fulfilling DEP's mission.

Each year since 2011, DEP has collected more than \$140 million of revenue directly attributable to the sale of water and sewer liens and the pre-lien sale process. In addition, an estimated \$380 million of incremental revenue is collected each year due to the lien sale's "halo effect" – an inducement of customers to stay current on their charges to avoid being placed on the lien sale list. The impact of the halo effect was substantiated in Fiscal Years 2007 and 2008, when the lien sale was suspended for a 16-month period. During that time, customer behavior changed in response to the expiration of the lien sale and, month by month, collections fell increasingly below the revenue target (by as much as 21 percent in September 2007). From that experience,

DEP and the Water Board believe that substantially altering or eliminating the lien sale would result in a close to 14 percent revenue shortfall. Measured against recent water and sewer revenues, a shortfall of this magnitude would involve the loss of \$380 million annually. These funds are vital to meeting the City's obligations every year.

As background on the scale of the lien sale for water and sewer charges for Fiscal 2016:

- ✓ In November 2015, well before the required notice period, DEP sent notices to nearly 16,000 properties that had either already met, or were on track to meet, the eligibility criteria for inclusion in the 2016 lien sale.
- ✓ In January 2016, DEP sent another notice to more than 13,000 properties that met the criteria for inclusion in the lien sale.
- ✓ In February 2016, the official 90-day notice was sent to 15,844 properties, representing \$217 million in outstanding charges. In addition, these properties were listed on DOF's website and in a printed notice that was published in the Daily News.
- ✓ This same group of properties continued to receive a 60-day notice, a 30-day notice, and a 10-day notice, unless the owners either paid their delinquent balances or signed a binding payment agreement for the delinquent balances.
- ✓ These notices resulted in over 13,856 payments made for amounts totaling \$126.7 million. In 2016, DEP sold liens on only 1,286 properties—or less than 8.2 percent of the original 90-day list.

DEP is committed to protecting its most vulnerable customers while ensuring that everyone pays his or her fair share for the water and sewer services used. That is why in Fiscal 2016 the Water Board, in partnership with DEP, adopted the lowest rate increase in eleven years, froze water and sewer bills for roughly 25 percent of all single-family homeowners – many of them seniors – and partnered with the Human Resources Administration and DOF to carry out Mayor de Blasio's progressive vision by creating the Home Water Assistance Program (HWAP) to help over 53,300 low-income customers. HWAP automatically provides a \$116 credit annually to 13,200 low-income homeowners who qualify for the federal Home Energy Assistance Program (HEAP) and 40,100 low-income senior and disabled homeowners who receive DOF property tax exemptions.

Since 2011, DEP has also implemented a number of initiatives aimed at helping its customers and reducing individual costs. These initiatives are detailed in Section IV.

3. HPD

HPD's mission is to promote the construction and preservation of affordable, high-quality housing for low- and moderate-income families in thriving and diverse neighborhoods in every borough by enforcing housing quality standards, financing affordable housing development and preservation, and ensuring sound management of the City's affordable housing stock.

HPD and other City agencies issue violations to properties when existing conditions are hazardous to life and safety. Should landlords fails to timely correct immediately hazardous conditions (for example, when heat is not being provided, when lead-based paint hazards exist or when serious leaks are present) and advise the respective agencies that the repairs were completed, HPD's ERP or AEP or Demolition Unit may respond by contracting for repairs of the condition. HPD charges for these repairs, and DOF bills for the charges and administrative fees on owners' property tax bills. If the ERP charges are not paid timely, the building may become a candidate for the lien sale. In addition, HPD is authorized to bill properties for inspection fees in cases where: inspections continually identify a lack of heat or hot water, inspections result in violations being issued within the same apartments on multiple occasions, inspections at AEP buildings result in violations or false certifications, or, buildings are issued an order in the AEP.

ERP is an important trigger for the tax lien sale because it allows HPD to recoup the costs incurred from buildings that fail to comply with maintaining safe and habitable homes. Before this trigger was in place, some building owners would pay property taxes, but allow the City to make the required repairs and not pay those charges for many years. In 2011, the first year that ERP charges were a trigger for the lien sale, the City recouped \$10 million of the \$12 million in ERP stand-alone charges that were open at the time. The Program ensures that owners know that there are more serious consequences for failing to maintain their property and jeopardize the lives of their tenants.

HPD's statutory role in the tax lien sale is to identify properties, via their block and lot numbers, that need to be excluded from tax lien sale per the statute. HPD is required to exclude the property types listed below. HPD also has one active category for discretionary removals.

Table 4. HPDRemovals		
HPD Removal Code	Exclusion Category	Description
H01	Statutory	Statutorily Distressed, residential property: Lien to value is at or greater than 15 percent and one of the following: - ERP \$1,000 or greater - 5 B and C violations per dwelling unit
H02	Statutory	HDFC-owned coop or condo

		<i>*Rentals are still eligible for the sale</i>
H07	Statutory	Property with an in rem action, in rem payment plan, or counter litigation
H06	Mandatory	Administrative Error. Property is City-owned and managed by HPD.
H04	Mandatory	Urban renewal sites pending acquisition
H05	Discretionary	<p>HPD Program pull criteria (HPD and HDC properties):</p> <ul style="list-style-type: none"> - A pending administrative action will address the arrears retroactively (pending exemption, or resolution of exemption implementation issues) - Property is in the current or future workout pipeline, and resolution is expected within two years - Property is in the development pipeline and is expected to close within two years

In an effort to support the management of the City’s affordable housing stock, HPD funds two technical assistance providers for Housing Development Fund Corporations (HDFCs). Training is offered in building management, budget planning, board and conflict resolution, and financial reporting. Individual advisory sessions are available in addition to classroom training. These trainings assist HDFCs that need additional support to maintain their building’s financial, physical, and regulatory health.

IV. Task Force Recommendations: Guiding Principles for the Administration and Legislative Reauthorization of the Tax Lien Sale

As discussed above, the primary purposes of the Program are to increase the collection of debts owed to the City in order to provide funds for government services, and to minimize cost-shifting from tax delinquent property owners to tax compliant ones. Any recommended changes to the Program, whether intended to be implemented administratively or legislatively, should be consistent with the Program’s primary purposes. At the same time, the City aims to make the Program efficient and fair and to ensure that protections exist to avoid any additional financial burden on property owners or, in extreme cases, the needless loss of property ownership.³

With these concerns in mind, after considerable discussion and research, the Task Force has developed four principles that it recommends guide future administrative and

³ Rao, John. *The Other Foreclosure Crisis – Property Tax Lien Sales*. Boston: National Consumer Law Center, 2012. https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf

legislative reforms of the Program. The principles reflect the goals of ensuring prompt payment of municipal charges while also protecting other City priorities and interests, such as support for homeowners and not-for-profit organizations, renters, and neighborhoods, evidence-based policymaking, and the maintenance of affordable housing.

In addition, during the past year of Task Force meetings and the lien sale review, a general consensus was reached on some of the important challenges. Where applicable, some of the recent initiatives that have been implemented by the different agencies represented on the Task Force are included below in reference to the relevant guiding principle.

A. Minimize the Number of Properties with Liens Sold in the Tax Lien Sale

In general, properties are included in the lien sale only when they meet a certain threshold of delinquency and do not qualify for, or have in place, an exemption. Therefore, the fewer properties that have liens sold means either 1) that delinquency rates are low or delinquent property owners pay their debts or enter into installment agreements to pay their debts in order to avoid the lien sale, demonstrating the efficacy of the Program as an enforcement tool, or 2) that more eligible properties have been granted exemptions, demonstrating the efficiency and fairness of the City's outreach and administration of its exemption programs.

The number of properties with liens sold in the lien sale as compared to the number of properties noticed for sale 90 days prior to the sale has generally been on the decline since a series of reforms were implemented as part of the 2011 legislative renewal of the City's authority to hold the lien sale. While in 2011, 20 percent of the liens included on the 90-day notice list were ultimately sold, by 2016 that percentage dropped to 14 percent.

The Task Force recommends that efforts should continue to be made to minimize the number of properties with liens sold in the lien sale by offering improved options for payment, increased access to information about available exemptions and abatements, and assistance to property owners to help them resolve their payment problems and avoid a stressful and financially overwhelming process.

1. Modify Payment Plans to Ensure That They Are Feasible and Affordable

A payment plan is an agreement between the property owner and DOF or DEP to pay the amount owed over time instead of paying the full delinquent amount at once. Currently, the City offers payment plans with terms of up to ten years and the option of a \$0 down payment. However, despite these generous terms, the default rate for DOF payment plans is 38 percent. Similarly, the DEP payment plan default rate is 20 percent. Except in cases of extenuating circumstances, once a property owner defaults on a

payment plan, if the owner does not cure such default, he or she is ineligible to enter into another payment plan. After a lien is sold, the property owner is not able to enter into a payment agreement for any newly delinquent charges for five years, potentially increasing the chances that his or her lien will be sold in a subsequent lien sale unless he or she pays the entire amount owed.

The Task Force has observed that payment plans that are successfully completed are typically paid in about two years. Therefore, the most effective payment terms should be explored, including the length of agreements and significance of down payments.

As a result of the Task Force's discussions over the past year, DOF has instituted a number of policies and reforms to enable property owners with payment plans to avoid default. For example:

- ✓ **Dedicated form for extenuating circumstances.** DOF created a dedicated form for property owners to apply for an extenuating circumstances exception.
- ✓ **Early notification for those at-risk.** DOF has begun to send notices to property owners who are three weeks late in making a payment that they are at-risk for default. DOF will be offering payment plans with monthly payments, which will allow owners easier budgeting for these payments. In addition, the
- ✓ DOF is exploring what other tools could help property owners bring their payment agreements out of default.

It is these types of reasonable adjustments to the payment plan process that provide relief and information to struggling property owners, while still incentivizing timely payments, that the Task Force recommends be pursued by the City in the future.

2. Establish Interest Rates at a Fair and Effective Level

Once a property owner is delinquent in paying their municipal charges, he or she is responsible for paying both the delinquent charges as well as interest that accrues on those charges, thus increasing the price of redeeming one's property if it is included in the lien sale. The interest rates for such delinquent charges are annually adopted by the City Council separate from the lien sale legislation, and they apply to the delinquent charges before a property meets the criteria for inclusion in a tax lien sale. Therefore, the Task Force recommends that interest rates should be maintained at a level that does not effectively prohibit property owners from overcoming their debt but also serves as a deterrent to would-be delinquent payers. To determine what this level of rates should be, the Task Force recommends that the City take full advantage of its current process through which the New York City Banking Commission annually reviews the interest rates for all liens and recommends proposed interest rates to the City Council for adoption. The Task Force believes this process for the review and adoption of interest rates can ensure that the maximum interest rate be fair and reflective of current economic conditions.

As an example, for Fiscal 2017, the Council lowered the interest rate for the late payment of property taxes on properties with assessed values of \$250,000 or less from 9 percent to 6 percent, while readopting an 18 percent interest rate for properties with assessed values of more than \$250,000 and a 9 percent interest rate for the late payment of water and sewer rents. The lower interest rate for property taxes may decrease the number of properties in the lien sale by decreasing the rate at which property owners accrue debt and help stem the mounting debt owed by those eligible for the lien sale that could prevent them from being removed from the sale.

3. Conduct Appropriate and Helpful Outreach

The Task Force recommends relevant City agencies conduct appropriate outreach and assistance to help property owners have sufficient time and notice to find a solution and prevent their entry in the lien sale. Strategies that should be considered include disseminating adequate information about exemptions and abatements, implementing an efficient and accurate process for granting such exemptions and abatements, informing property owners of the risks of not paying their debt in a timely manner and having their liens sold; providing financial counseling to residential property owners, and prominently advertising available resources like the lien sale ombudspersons. The lien sale ought to be equitable and used by the City as a last resort. Avenues to provide property owners with useful, reliable, and timely information and services to avoid the lien sale should be thoroughly explored.

Along these lines, the City has already taken several steps to improve its robust outreach efforts. These steps include:

- ✓ **Expanded outreach to non-profits.** The City has expanded efforts to contact non-profits that have not renewed their non-profit exemptions, and the City now emails notifications to owners whose properties are included in the potential tax lien sale pool and, therefore, are at risk for having their liens sold.
- ✓ **Expanded outreach to residential properties.** HPD has begun working with DOF to start outreach in October to certain residential properties that are at risk for inclusion in the May lien sale. HPD will include those properties in an early proactive outreach campaign about financing programs available to address a building's financial and physical needs before the liens are sold.
- ✓ **Changes to DEP collection practices.** DEP has established collection practices to reach out to and work with customers long before their outstanding debt rises to the level at which it is lien sale eligible, including:
 - Late payment notices and letters,
 - Outbound collection reminder calls,
 - Automated collection reminder calls, and
 - Letters to customers in payment agreements every month a payment is missed.

The agencies and Council together have additionally worked to conduct outreach events directly in local communities.

4. Provide Flexibility to Owners Who Make Good Faith Efforts

While the goal of the Program is largely focused on resolving outstanding municipal debt, the City has historically recognized that external shocks may make it temporarily difficult for property owners to pay their debts. The Task Force recommends the City continue and, where feasible, strengthen its commitment to providing some flexibility to owners who show a demonstrated effort to resolving their debt. A prime example of these efforts includes DOF's recent production of a formal extenuating circumstances application form – noted above in Section IV.1.a. This form is distributed in its Business Centers and on its website to clarify how owners, who have defaulted on a payment agreement due to the death of a close relative or the loss of a job, can establish a new payment plan before the statutory five-year agreement-free period after a default.

B. Create Clear and User-friendly Bills and Notification

Property tax bills ought to be clearer to facilitate the taxpayer's understanding of what is owed and when. This may increase the likelihood that payments are made on time and help the taxpayer appropriately plan for their financial health.

Moreover, behavioral economics has shown that specific bill or notice design and additional email alerts are some of the simple nudges that can effectively alter taxpayer behavior and incentivize tax compliance.⁴ Procrastination, a sometimes inevitable human behavior, and low financial literacy are potential drivers behind some property owners ending up at risk of having their liens sold. Improved notices and property tax bills may provide a partial solution to these cases.

To this goal of clearer communication, the City has already begun the following efforts:

- ✓ **Automated Meters for Water Usage.** DEP has installed Automated Meter Reading devices (AMR) on 97 percent of all properties so that customers are now able to view water usage data in near-real time, manage their consumption more effectively, and potentially reduce their charges. Because of AMR, DEP's estimated bill rate has fallen by more than 82 percent since 2009. As a result, 97 percent of the water and sewer bills sent to metered customers reflect actual usage, which has led to a 64 percent drop in customer disputes in Fiscal 2016 versus Fiscal 2011 -- and a 50 percent reduction since Fiscal 2008.
- ✓ **Automated Leak Notifications.** Since DEP's implementation of Automated Leak Notifications, more than 257,000 customers have received automated leak notifications and saved more than \$99 million dollars in charges because they have been able to respond to and fix their leaks in a timely manner.
- ✓ **Expand Leak Forgiveness Program.** In Fiscal 2015 the Water Board expanded the leak forgiveness program to include leaks of maintainable fixtures, such as

⁴ "Fiscal Blackmail: Lessons for behavioural economics can boost tax compliance." *The Economist*, May 24, 2014.

toilets and sinks, which were previously excluded. Over 6,300 customers have benefited from this change so far, receiving \$6.4 million in leak forgiveness.

- ✓ **Monthly Billing.** DEP began offering monthly billing as an opt-in option to all 836,000 customers on July 1, 2015.

Further, DOF will be implementing the following new initiatives:

- ✓ **Monthly payment agreements.** DOF will begin efforts to establish monthly payment agreements for property owners who find it easier to manage monthly payments as part of their household's budget.
- ✓ **New at-risk letter.** DOF will establish a new at-risk letter for property owners who have missed a payment plan installment but whose plan is not yet in default status because fewer than six months have elapsed since the missed payment. One hundred twenty such letters were issued for the first time in July 2016.

C. Better Understand the Lien Sale Impact

Understanding why properties end up in the lien sale and what happens to them afterwards will continue to be an area of focus for the City. Multiple variables may eventually lead an individual into the sale pipeline, but to combat tax delinquency and reduce the number of liens sold, evidence-based strategies must be deployed before delinquent properties become lien sale candidates. Well-structured outreach strategies can be valuable and even essential in keeping individuals in their homes, while minimizing the depletion of City resources to combat tax delinquency.

Therefore, the Task Force recommends that, as time and resources allow, the City further research several broad categories where greater information would be useful in future improvements to the Program:

- Why property owners fall behind on their taxes;
- How property owners resolve their tax debt; and
- The state of properties post-tax lien sale.

As an initial step, DOF recently implemented a survey that was provided at its Business Centers throughout the lien sale notice period. It surveyed the reasons why a taxpayer was behind on their taxes, the length of time a homeowner has been in their property, and other relevant data points. The survey also captured information that helped provide feedback to DOF on their customer service and outreach efforts. DOF plans to continue the survey, distribute it more widely in the future, and refine it to maximize participation and solicit additional feedback.

D. Assess Whether the Resolution of Outstanding Debt Could Be an Opportunity to Advance Other City Priorities

As discussed earlier, the primary purpose of the Program is to ensure the effective, efficient, and fair collection of debts owed to the City by property owners to support the

services provided by the City. Without diminishing that primary goal, the City should assess how the resolution of property tax and other municipal charge delinquencies offer opportunities to address other City priorities.

The City has already begun efforts in line with this recommendation including:

- ✓ **HPD's Discretionary Removals.** HPD exercises existing legal authority to pull a property from the lien sale if the agency determines that the property is an appropriate fit for one of its existing housing programs to preserve affordable housing.
- ✓ **Water Debt Assistance Program.** DEP created this program to assist multi-family homeowners who are on the 90-day lien sale list and currently under threat of foreclosure or mortgage delinquency. As part of the program, DEP can remove qualified properties from the lien sale and defer the debt until the property is sold, refinanced, or the owner has the ability to pay the debt. If accepted into the program, the owner must enter into a binding agreement with DEP stating that the debt is valid and will be paid on or before the sale, transfer, or refinancing of the property. In exchange, the owner must agree to pay all current and future charges on time or the agreement may be voided and the property will be included in a subsequent lien sale. As of May 2016, 136 Water Debt Assistance Program applications were approved for the Fiscal 2016 lien sale with total accounts receivable of \$1.2 million.

V. Conclusion

The New York City Tax Lien Sale program is a critical compliance tool. In the two years since its last renewal, it has been modified to improve the transparency of the process, to engage with owners facing hardship, and to provide the help that they need.

To recap, some of the improvements made over the last two years that will be built upon include:

- ✓ Offering monthly payment arrangements
- ✓ Reaching out to non-profits that are candidates for the lien sale
- ✓ Surveying customers to better understand why they end up in the lien sale
- ✓ Providing more and higher-quality outreach events
- ✓ Emailing notifications to lien sale candidates

Due to its importance in ensuring equitable tax collection, the Task Force recommends that the Council and Administration work to reauthorize the lien sale prior to its scheduled expiration on December 31, 2016. Reauthorization prior to expiration results in the seamless continuation of the program allowing City Agencies to manage their processes in an efficient and effective manner. The Task Force recommends that the Program be reauthorized for a period of at least four years.