Testimony of the New York City Department of Housing Preservation and Development

Regarding Preconsidered Int. T2021-8260

November 29, 2021

Good morning, Chair Cornegy and members of the Committee on Housing and Buildings. On behalf of the New York City Department of Housing Preservation and Development (HPD), thank you for the opportunity to submit testimony today on legislation to extend the J-51 tax exemption and abatement program through June 30, 2022.

As all of you know too well, New York City faces a long-standing housing crisis that has been made all the more urgent in the wake of COVID-19. More than ever, it is clear just how critical safe, quality, affordable housing is for the health and stability of our residents and the neighborhoods in which they live. As the City works to rebuild from the pandemic, it is important to have a wide range of tools and programs to create and preserve more affordable housing opportunities for New Yorkers.

The J-51 tax incentive program serves as an important tool for owners to maintain and upgrade existing multiple dwellings. J-51 benefits apply to a variety of improvements including, but not limited to, the installation or replacement of heating systems, plumbing, wiring, elevators, windows and a range of other major capital improvements. The program also helps owners of non-residential buildings convert their buildings to residential use with substantial governmental assistance. The program issues 14- or 34-year exemptions from taxes on any increase in assessed valuation resulting from those alterations certified by HPD and an abatement of property taxes equal to between 50% and 150% of reasonable construction costs as determined by HPD. The 34-year exemption and increased abatement (150% of allowable construction costs) are currently available for the substantial rehabilitation or conversion of buildings conveyed by the City to private and not-for-profit owners and for moderate rehabilitation. Benefits are available as of right to owners of eligible projects, which must comply with the requirements of rent stabilization for rental units during the benefit period.

The J-51 program has been primarily responsible for the rehabilitation and upgrading of New York City's housing stock since 1955. It also is an important tool in HPD's programs to upgrade and rehabilitate the City's housing stock and to enable owners to maintain rents affordable to low and moderate income households while repaying rehabilitation loans. While the pandemic has underscored the need to update the J-51 program to target its tax incentives to low-rent properties that most need assistance to sustain habitability, the existing program should be allowed to continue pending the passage of a State statute that would create a new version of the J-51 program.

We therefore support this bill to extend the deadline for projects eligible to receive J-51 benefits from June 29, 2020 to June 29, 2022, and appreciate the opportunity to testify. We look forward to our continued partnership as we seek ways to help New Yorkers pull through and get to the other side of this crisis as we work towards a more affordable and equitable city.

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Queens Borough President Donovan Richards Testimony
Committee on Housing & Buildings – November 29, 2021

Good morning, everyone. My name is Donovan Richards and I have the honor of serving as Queens Borough President. Thank you to the Committee on Housing and Buildings for allowing me the opportunity to provide testimony on such a critical topic.

In the borough of Queens, our residents are still recovering from the economic disruption of the COVID-19 pandemic. In some neighborhoods, those impacts are exacerbated by the devastation caused by Hurricane Ida. In addition, we have seen data pour in from across the country regarding the growing unaffordability of stable, quality housing for working class families.

Historically, the J-51 tax program has encouraged landlords to make improvements to aging multifamily properties that are rent regulated. Our legislature should pass J-51 to assist New Yorkers in preserving our affordable housing stock while incentivizing building owners to make their properties more resilient against climate change.

The City Council should also look at this through a quality of life lens. This proposed bill would encourage property owners to continue making serious capital improvements while stabilizing rent for the duration of benefits to property owners and create homeownership opportunities for low and middle income buyers.

In the absence of further city legislation, we will see continued pricing out of families, especially in Queens, where the effects of climate change call for continued infrastructure improvements, which may ultimately cause property owners to raise rents on working families.

According to the city of New York Department of Finance’s Annual Report on Tax Expenditures, in 2020, the City Council, acting on state legislative authorization, extended the deadline for completing projects in order to qualify for J-51 benefits to June 29, 2020. The J-51 program provided 20,971 exemptions and 41,172 abatements to 399,213 units. The exempt assessed value of these properties was $1,886.0 million.

New Yorkers in these 399,213 units are waiting for City Council action, as the prior authorization has lapsed. This vital piece of legislation will serve as a pathway toward protecting affordable housing and building our cities multifamily dwellings to stand against the harsh storms we have seen impacting our city like never before, retroactively until June 30, 2022.

Many of these working class residents are our healthcare heroes, grocery store workers, teachers, food service workers — individuals who sacrificed so much for our city during its time of need.

They are our loved ones, our friends, neighbors and colleagues.

Now I ask the full City Council to do its part to protect our vulnerable communities and pass this extension of the J-51 tax program.

Thank you for your time.

REBNY Testimony | November 29, 2021

The Real Estate Board of New York to

The Committee on Housing and Buildings of the New York City Council Regarding Pre-Considered Intro. No. T2021-8260

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks Chair Cornegy and the New York City Council Committee on Housing and Buildings for the opportunity to provide testimony in support of Pre-Considered Intro T2021-8260, which would renew the J-51 tax abatement and exemption program until June 30, 2022.

The legislation under consideration by the Council today will ensure that buildings that complete work after June 29, 2020, can apply for J-51. J-51 is a critical tool for improving the aging building stock of New York City and is used widely throughout all five boroughs. The program has supported 51% of co-ops citywide, including Article V Redevelopment Companies, Mitchell-Lama co-ops, and naturally occurring affordable housing[1].

Rental income and capital investment are the lifeblood of ensuring high-quality rental housing, and programs like J-51 help preserve homeownership as a primary wealth-building tool for low- and middle-income households. J-51 allows multifamily rental owners and low- and middle-income owners to afford increasingly expensive capital upgrades. The program allows them to do so without spending retirement savings or other funds, nor does it pass the cost onto equally cash-strapped tenants. Continuing the J-51 program will prevent thousands of New Yorkers from facing increased rents and property tax bills to offset the cost of critical infrastructure upgrades. Providing direct assistance in the form of tax programs such as J-51 is therefore critical to maintaining affordability alongside quality living conditions.

The program has high utilization in neighborhoods such as Co-op City and Hudson Manor Terrace in the Bronx, Glen Oaks Village and Forest Hills South in Queens, and Penn South in Manhattan. Passing an extension of the J-51 program today will support a pathway to homeownership and economic mobility for communities of color, middle income and low-income households, and working-class New Yorkers. Immediate renewal of this program will safeguard the vibrancy of New York's housing stock and maintain stability for many hardworking New Yorkers negatively impacted by COVID-19.

REBNY does want to note that the program is not perfect and consideration for changes in the future are duly warranted. As we approach continued reauthorization by the State in 2022, REBNY would encourage the Council and the City to consider reforms to future iterations of the program as part of that process to ensure optimal functionality. A new J-51 should consider reforms to the Certified Reasonable Cost (CRC) formula to ensure a streamlined, greener, and more cost-efficient program that uses public

[1] Calculation made based on the total number of co-ops citywide from the Census' latest Housing Vacancy Survey divided by the total number of co-ops benefitting from J-51 per 2019 data from HPD.

resources efficiently while leveraging the power of the private sector as best as possible. The current CRC formula is dated in part because it has not been reformed to be consistent with the rent regulation reforms passed in 2019. The application process and requirements for the CRC are confusing and ought to be streamlined to reduce barriers to entry and increase utility of the program. Reforms to both programs could make J-51 a more efficient tool for rehabilitation and deploy the use of private capital in a more targeted way.

A future iteration of the program could also ensure new construction and create opportunities for substantial rehabilitation contributing to climate adaptation. Adopting sustainability-driven measures as criteria for accessing programs should provide an opportunity for universal agreement. Additionally, providing direct subsidy dollars for system-wide upgrades in existing buildings to reduce emissions or electrify spaces will ensure this complicated work is done. Programs like J-51 should and must be reformed to make it financially feasible to bring buildings into the 21st century and to also meet sustainability goals.

Despite the need for programmatic reform to J-51, REBNY would strongly encourage the Council to proceed with immediate renewal of the current program. Now more than ever, New Yorkers need safe and affordable homes in which to live. Extending J-51 now will provide stability to vulnerable New Yorkers hardest hit by COVID-19 and economic opportunity to thousands of New Yorkers citywide. As always, REBNY and our members stand ready to collaborate with the Council and the City on ways to improve access to housing for all New Yorkers. REBNY looks forward to working with our partners in government to ensure key programs like J-51 remain and are functioning optimally to put these homes within reach.

Thank you again for the opportunity to testify today and for your consideration on these points.

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Hearing to exemption from taxation of alterations and improvements to multiple dwellings

Testimony of Judith Goldiner
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&

Testimony of Samuel Stein
Housing Policy Analyst, Community Service Society

New York City Council Committee on Housing and Buildings

November 29, 2021

Thank you Chair Cornegy, Councilmember Yeger and the New York City Council Committee on Housing and Buildings for this opportunity to comment on the proposed renewal of the J-51 property tax exemption and abatement program.

The Community Service Society is an independent nonprofit organization that addresses some of the most urgent problems facing low-wage workers and their communities here in New York City, including the effects of the city's chronic housing shortage.

The Legal Aid Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law.

The Community Service Society and The Legal Aid Society present this joint testimony to urge this committee and the Council to either significantly amend the J-51 program or to let it lapse. The following testimony is very close to the that which our organizations offered on this issue in 2019, as the problems with the program have not changed in the intervening years.

The J-51 tax expenditure program is an extraordinarily expensive program. In fiscal year 2021 it cost the city $295.9 million in lost taxes. But the benefits it produces are not proportional to this cost. Although it certainly does help to make needed improvements in some apartments that would not otherwise be improved, it is poorly targeted and also bestows unnecessary tax breaks on owners of apartments that are not affordable and that would have been improved even without the tax incentive.

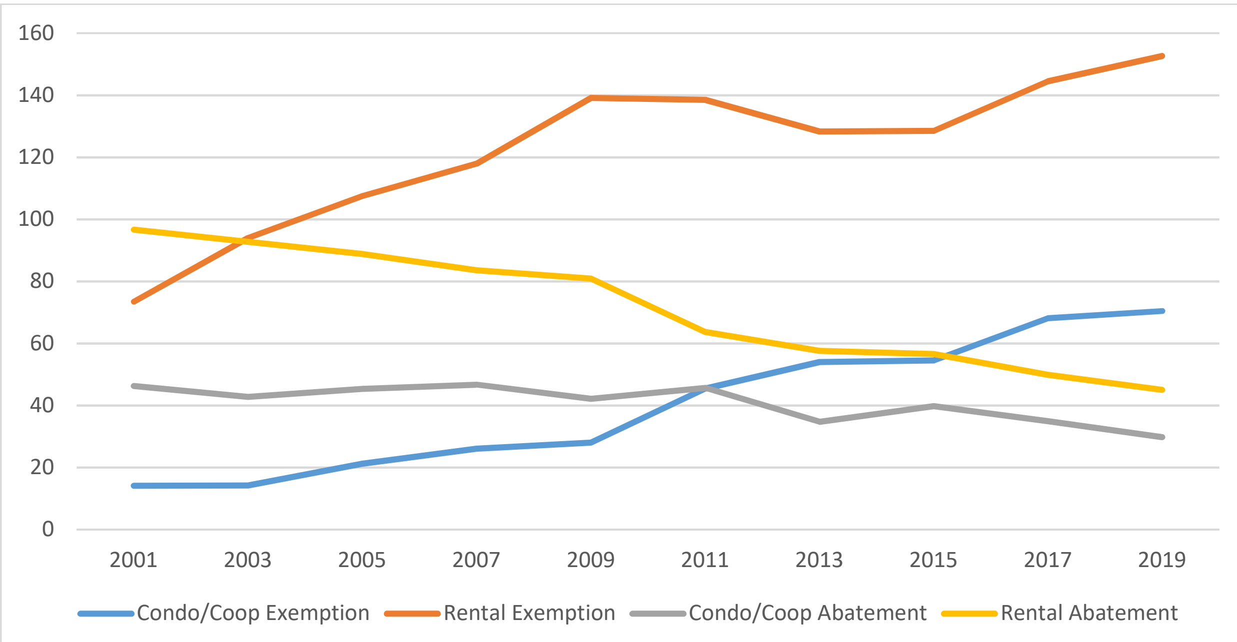
The most clearly justifiable use of J-51 is to help pay for improvements in subsidized affordable housing in buildings subject to regulatory agreements. Here the program is simply one of several tools used to finance the creation or preservation of affordable housing as part of the city's or state's housing production plan. The Department of Finance's reporting on J-51 in its *Annual Report on Tax Expenditures* unfortunately does not make it clear how much of the expenditure is devoted to this purpose, but it is probably a significant part, helping to account for the fact that 31 percent of the total expenditure is for buildings in the Bronx.

The least justifiable application of J-51 is for non-affordable coops and condos, where owners already have a strong incentive to improve their apartments simply in order to enjoy the improvement. The tax expenditures report does not distinguish affordable from non-affordable condos and coops, but the share of the expenditure going to all condos and coops rose from 26 percent in 2001 to 30 percent in 2021, and non-affordable apartments surely make up most of that.

Market rate and rent-stabilized rental apartments make up an intermediate case. The existing J-51 law attempts to direct benefit to apartments in these categories that are relatively affordable. To this end, the exemption component of J-51 is normally restricted to apartments outside of Manhattan below Harlem, and the abatement is restricted to buildings where the assessed value is below $40,000 per apartment, meaning that the Department of Finance's estimate of the market value is below about $89,000.

The significance of these restrictions have changed over time, as larger areas of the city are incorporated into the luxury market once concentrated in Manhattan below Harlem, and as market values rise rapidly throughout the city. The result is that the restriction on exemptions has been getting much weaker, while the restriction on abatements has been getting stronger. The results of this can be clearly seen in Figure 1.

Figure 1: Inflation-adjusted value of J-51 exemptions and abatements, in millions of 2019 dollars, 2001 to 2019



It is clear from this graph that the restrictions are no longer working as intended. Neither the increase in the value of exemptions nor the decrease in the value of abatements reflects any desirable targeting of benefits. Instead, the reflect that the assumptions underlying the program's targeting strategy are getting more and more out of date.

As discussed in the Community Service Society's 2012 publication, "Upgrading Private Property at Public Expense: The Rising Cost of J-51," the program was developed and had its major revisions at times when real estate investment conditions in New York City were vastly different from those we see today. Times have changed, and the owners of rental housing in the city are in a far more advantaged position than they were in the 1950s, 1970s, or even the 1980s. Over the 63 years of the program's existence, efforts to retarget it appear to have had only modest success in shifting the direction of benefits toward the greatest need. The result is the squandering of public funds at a time of great fiscal stress.

The J-51 program should be either drastically altered or eliminated entirely and replaced with a far more targeted incentive for improvements that benefit low-income tenants and that would not be undertaken without the incentive. If the program is continued, the following changes would significantly improve it:

- Eliminate all benefits for coops and condos except those being developed with government assistance.
- Replace the current system of restrictions on exemptions and abatements with one that more directly targets benefits to lower-rent apartments, ideally by setting a limit on the average rent on apartments in buildings eligible for the benefit. The outdated strategy of basing eligibility on geography should definitely be abandoned.
- Improve the coordination of the J-51 benefit with the rent increases allowed in rent-stabilized buildings for major capital improvements by requiring landlords to seek a J-51 exemption before applying for these rent increases and document the outcome to the state agency that administers rent stabilization; and by reducing the rent increases by 100 percent of the value of the tax benefit instead of only 50 percent.

Additionally, while the acceptance of J-51 benefits means that buildings are rent regulated and landlords cannot deregulate units, in practice, both the City and the State have abandoned their responsibilities to oversee this program. In response, landlords have taken advantage of lax enforcement and ignored their legal responsibilities. If the Council were to simply extend the law without amendment, the landlords would interpret such an action as the Council's support for business as usual. New York City landlords would continue to accept the benefits of the exemptions and abatements without having to comply with the affordability provisions in the law.

Currently the J-51 law requires that if a rental building receives J-51 benefits, the landlord must register the apartments as rent regulated. Additionally, if the building receiving the J-51 was rent regulated under the Emergency Tenant Protection Act, landlords could not deregulate units. Further, the law states that if a landlord who receives a J-51 benefit also applies to New York State Homes and Community Renewal for a Major Capital

Improvement increase, the MCI increase should be decreased by 50% because of the receipt of the J-51. However, there is no mechanism in place to ensure that landlords do not receive the full MCI increase and the J-51 benefit. It is our experience that lax enforcement has led to high rents and deregulation.

The Legal Aid Society represents tenants in a building in Queens. Our clients' building has 110 units. Although the building was built before 1974, it was never regulated as rent stabilized. In 2008, the landlord of the building began receiving the J-51 tax abatement. The landlord assured the New York City Department of Housing Preservation and Development that he would comply with the law by registering eleven units as rent regulated. Not one person at HPD thought to check its own housing portal to see that the building had over 100 units. Indeed, those fortunate tenants who lived in the eleven registered units were able to apply for and receive Senior Citizen Rent Increase Exemptions and Disability Rent Increase Exemptions. Our clients who were eligible for such benefits could not access them because their apartments were not registered as rent regulated. When we sued the landlord and the City, the City responded by arguing that the J-51 law had nothing to do with providing affordable housing to tenants and instead as long as the landlords completed the improvement to the building, the benefits could not be revoked. This is but one example of New York City's decades long refusal to enforce the rent regulation aspect of the J-51 law.

Thus until the law is amended to ensure that landlords who receive these benefits actually comply with the affordability restrictions in the law, we urge the Council to eliminate this program.

Conclusion

Thank you for the opportunity to testify before the New York City Council Committee on Housing and Buildings today.

Respectfully Submitted:

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November 29, 2021

TESTIMONY OF GEOFFREY R. MAZEL BEFORE THE NEW YORK CITY COMMITTEE ON HOUSING AND BUILDING, RE: EXTENSION OF J-51 BENEFITS NOVEMBER 29, 2021 AT 11 AM

Committee Members,

My name is Geoffrey Mazel and I would like to thank you for the opportunity to speak before you on this extremely important issue By way of background, I am a practicing attorney in the City of New York for over 35 years in the firm of Hankin & Mazel, PLLC, we represent Coop Board which includes over 20,000 units of Coop housing; I am the Chairperson of the Queens Bar Association Coop & Condo Committee and I am the Legal Advisor to the Presidents' Coop & Condo Council, an organization that reaches tens of thousands of owners and residents of Coops and Condos,

I would like to submit my absolute support for the extension of the J-51 Tax Credit Benefits program, which passed both the New York State Assembly and Senate with vast majorities and was immediately signed by the Governor in June, 2021. My research indicates that the J-51 tax exemption and abatement program took effect in 1955 as a way to encourage property owners to make capital improvements on their property. It includes most significant capital improvements, including window replacements; elevator upgrades; electrical, plumbing and heating overhauls and façade work. The type of work that keeps the residential housing stock in New York City in safe condition and improves the lives of all the residents of these buildings.

As legal counsel for numerous Co-op Boards over the past 35 years I have seen the incredibly positive impact the J-51 program has had on my clients. This program has encouraged and fostered both much needed capital improvements and preventive measures, that may not have been taken but for the tax credits provided under the J-51 program. This program is essential for both the physical and monetary future of the Co-op housing stock in New York City.

As you are probably well aware, the New York State legislature has limited the J-51 program for only tax lots with assessed valuations under $40,000 per unit. This limitation effectively has made this program only for working- and middle-class housing. Therefore, this program has now been targeted to benefit those Co-op homeowners who need these benefits the most. This program will make the difference for these Co-op Corporation's from deciding whether to make a capital improvement or forego the improvement.

In addition, the capital improvements will provide good jobs for many New Yorkers in the field of construction and related services. Many of the work will involve high paying skilled workers and related professionals. Therefore, any monies paid out for these improvements will come back to the tax rolls many times over.

Respectfully Submitted,

Geoffrey Mazel, Esq.