



TENANT HARASSMENT SHOULD NOT PAY

An Evaluation of the Certificate of No Harassment Pilot Program



December 2020
A Report By



**COALITION
AGAINST
TENANT
HARASSMENT**





CATHnyc action outside City Hall in Manhattan in October 2017. Photo Credit: Melanie Breault, ANHD

THE AUTHORS

This report was researched and written by the members of the CATHnyc Research and Policy working group:

Lead Author Lucy Block, *Research and Policy Associate*, Association for Neighborhood and Housing Development (ANHD)

Katy Lasell, *Social Work Intern*, ANHD

Beck Goodman, *Tenant Organizer*, Northern Manhattan Improvement Corporation (NMIC)

Stephanie Storke, *Staff Attorney for Housing Justice*, TakeRoot Justice

Design by **Melanie Breault**, *Communications Manager*, ANHD



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CONH Victory Rally at City Hall in Manhattan in November 2017 featuring Maria, a member of Make the Road New York.

Photo Credit: Melanie Breault, ANHD



EXECUTIVE SUMMARY

The Certificate of No Harassment (CONH) Pilot Program was designed to prevent tenant harassment by regulating an owner's ability to do renovation and construction projects, which help bring in higher rents. The program uses New York City's permitting process as a point of leverage, requiring landlords to get a certification that they have not harassed tenants *before* they can obtain permits to do significant renovation or construction in their buildings.

The Coalition Against Tenant Harassment (CATHnyc), a citywide coalition of community organizations and legal service providers fighting the displacement of low-income tenants, worked to enact the CONH Pilot Program in 2017 to prevent harassment and ensure tenants can stay in their homes. **Two years into the 3-year pilot program, CATHnyc undertook an assessment of how the pilot program has fared in achieving its goal of stopping tenant harassment.**

To do so, CATHnyc conducted extensive interviews with tenant organizers, community-based outreach workers, and legal services providers; analyzed available data on eligible buildings; and held focus group-style conversations among coalition members.

Limited data and unforeseen events greatly impacted the pilot program and our evaluation of it – namely, the passage of the



June 2019 Housing Stability and Tenant Protection Act (HSTPA) and the onset of the COVID-19 pandemic greatly reduced the volume of applications and shifted the legal landscape and real estate market over the course of the pilot program. Nevertheless, we found evidence that CONH is appropriately targeting buildings that have clear indications of harassment, signs of behavior change in landlords whose buildings are eligible, and examples of supporting holistic tenant organizing strategies:

- Two organizers we spoke to were able to successfully use the CONH investigation process to engage tenants in organizing around the systemic problems they faced.
- Application withdrawals, which represent 43% of applications that had a final outcome, suggest that CONH did impact landlord behavior.
- Three of five harassment indicators were lower in buildings that the Department of Housing Preservation and Development (HPD) granted CONHs versus buildings whose owners withdrew

Two years into the pilot program, it is clear that CONH has the potential to be an effective tool in stopping tenant harassment – to achieve its intended impact, it will need to be both expanded and adjusted.

applications, including the number of executed evictions per unit, problems reported to HPD per unit, and HPD violations per unit (0.02 versus 0.03, 3.79 versus 6.57, and 6.33 versus 8.54).

At the same time, the program needs adjustments in its design and implementation to more effectively disincentivize tenant harassment:

- The eligibility criteria of the CONH Pilot Program are too narrow to meet the scale of the problem.
- The covered work framework is too narrow and does not capture landlords' failures to make repairs; it also does not address landlords doing work without obtaining required permits.
- Data on buildings where HPD granted CONH applications shows problematic indicators of harassment, and detailed information on how HPD made those decisions is unavailable.
- Implementation of the CONH Pilot Program fails to enable the necessary organizing, communication, and transparency for full tenant participation in the CONH process.
- The lack of tangible benefits to tenants is a barrier to their full participation in the CONH process.

CATHnyc recommends that the program be continued past the expiration of the current pilot program with new legislation that addresses these design and implementation issues and expands CONH's reach citywide to have the intended widespread, systematic impact that drove its enactment in 2017.

Our recommendations fall into five overarching categories:

A Expand CONH so it protects tenants citywide and make the program permanent.

B Update the program design to better achieve goals of preventing tenant harassment and displacement; close loopholes.

C Ensure the program incentivizes and facilitates community-based organizations to organize and fully engage tenants in the CONH process.

D Enable tenants and organizers to effectively participate in the CONH investigation and overall process.

E Create opportunities for tenants to see tangible, positive outcomes as a result of their participation in the CONH process.

CATHnyc's detailed individual recommendations can be found on pages 34-39 of the following report. **We believe that if elected officials and HPD meaningfully incorporate our recommendations into a permanent, citywide CONH program, it will be an effective tool for preventing tenant harassment in New York City.**

INTRODUCTION

Safe, secure, and affordable housing is a necessity for New Yorkers' stability and the health of New York City as a whole. Too often, profit motives drive landlords to harass tenants, threatening that stability – whether it is by failing to invest in needed repairs, evicting tenants in pursuit of higher rents, or doing unnecessary construction that allows for rent increases.

The Coalition Against Tenant Harassment (CATHnyc) is a citywide coalition of community organizations and legal service providers fighting against the displacement of low-income tenants, who are disproportionately people of color, through organizing and by advocating for stronger laws that prevent harassment and ensure tenants can stay in their homes.

To stop harassment, there must be systemic accountability for landlords who engage in exploitative and harassing conduct.

The Certificate of No Harassment (CONH) Pilot Program is one tool for establishing that accountability. **CONH requirements disincentivize tenant harassment by requiring landlords to get a certification that they have not harassed tenants *before* they can obtain permits to do significant renovation or construction in their buildings.**

CONH as a framework is not new – organizers in Hell's Kitchen won the first CONH requirements as part of the Special Clinton District in 1972¹, later expanded to additional “anti-harassment areas,” and New York City established CONH requirements for all Single Room Occupancy (SRO) buildings in 1983.²

The CATHnyc coalition identified an expansion of CONH as a way to effectively stop landlords from harassing, displacing, and depriving tenants of their rights – and from profiting while doing so. Specifically, CATHnyc chose the CONH tool for its intervention in the construction process – a key moment in the cycle of harassment and displacement at which the city has clear leverage to intercede via permitting. If carried out effectively and comprehensively, the CONH requirement can disincentivize the harassment that often accompanies major, profit-generating construction in buildings.

After CATHnyc organized for years to expand CONH requirements as a strategy to stop tenant harassment, the City Council passed legislation to create the pilot program in 2017 and it took effect in September 2018.

HOW DOES THE CONH PROCESS WORK?³⁰



ELIGIBILITY: Only some buildings are subject to CONH requirements, or “eligible.” For the Pilot Program, these are buildings that have six or more units and:

- are located in one of 11 designated community districts, plus community districts where a city-sponsored neighborhood rezoning has taken place since 2018 (only Staten Island Community District 1 has been added) and meet a “Building Qualification Index” (BQI) threshold set by the Department of Housing Preservation and Development (HPD). The BQI is based on numbers of hazardous housing violations, unpaid emergency repair charges, and recent changes of ownership; **or**
- are located anywhere in New York City and have received a full vacate order from HPD or the Department of Buildings (DOB) in the five years prior to July 24, 2018; **or**
- are located anywhere in New York City and have actively participated in HPD’s alternative enforcement program (AEP) for more than four months since February 1, 2016; **or**
- are located anywhere in New York City and New York State Homes and Community Renewal (HCR) or a court having jurisdiction has determined harassment has occurred.



APPLICATION: When a building on the CONH Pilot Program eligibility list applies to do “covered categories of work,” the owner is subject

to an investigation process and must obtain a certification that tenant harassment has not occurred in the five years prior before receiving a permit to complete the work.

Broadly, covered work includes: partial or full demolition, change of use or occupancy of any units or the building as a whole, removal of kitchens or bathrooms, changes to unit layouts, or replacing a central heating system with an individually metered system.

HOW DOES THE CONH PROCESS WORK?



INVESTIGATION: When an owner applies for a CONH, notice goes to tenants, local elected officials, and local community organizations.

HPD asks for information on any history of harassment in the building, going back five years. Some community organizations receive funding to investigate on behalf of HPD, and in many cases, HPD does the investigation. Other community-based organizations (CBOs), such as members of CATHnyc, do outreach to buildings despite not receiving funding from HPD, and help tenants respond to the notices or testify at a hearing. HPD determines whether or not there is a history of harassment in the building. If no harassment is found, a CONH will be issued, and the owner can receive their permit to do covered work. If HPD finds reasonable cause that harassment occurred, it can initiate a hearing before the Office of Administrative Trials and Hearings (OATH) where the landlord and tenants can testify. If a court or HCR found harassment or if the owner illegally evicted tenants or committed arson, HPD can deny the application without a hearing.

CATHnyc worked with the Center for Urban Pedagogy (CUP) to create a helpful guide that explains how CONH works using visual storytelling.

To download a copy of the guide in English or Spanish, visit welcometocup.org.

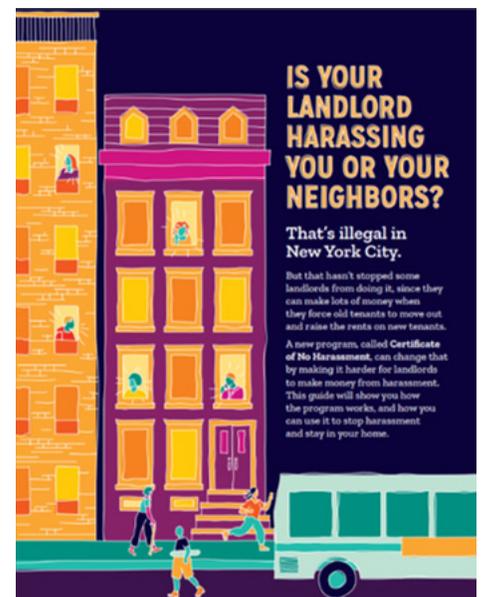


WHAT QUALIFIES AS HARASSMENT? New York City uses a broad legal definition of harassment that includes many acts that

would cause or intend to cause a tenant to leave their apartment.³ The definition has been updated several times in recent years, including in 2017, and most recently to protect those infected or believed to be infected by COVID-19. CATHnyc has created written materials explaining how to identify tenant harassment⁴ and the full legal definition.⁵



CURE: If an owner is denied a CONH permit, they can enter a “cure agreement” and receive a CONH in exchange for making 20-25% of the building permanently affordable at an average of 50% Area Median Income.⁶



CATHnyc originally advocated for all landlords whose buildings show indicators of harassment to be subject to CONH requirements, and all buildings citywide to be potentially eligible. Final legislation covered a much smaller universe of buildings (see **Eligibility, p. 7**). Two years into the pilot program, 1,113 buildings meet eligibility criteria in all of New York City. In contrast, *all* SRO buildings and multiple dwellings in the Special Clinton District and Hudson Yards/Garment Center, Williamsburg/Greenpoint, and West Chelsea anti-harassment areas are subject to CONH requirements.⁷ Additionally, whereas SRO and special district versions of CONH are permanent, the newest CONH law is a temporary pilot program designed to expire after three years.

Two events occurred after the pilot program's launch that significantly affected its outcomes. The first was HSTPA's limits on individual apartment improvement (IAI) rent increases and the elimination of vacancy bonuses and high-rent vacancy decontrol. Prior to its passage, landlords were able to use IAIs – renovations in rent-stabilized apartments, generally done during a vacancy – to dramatically raise rents above standard allowed increases.⁸ Such rent increases allowed landlords to push apartments past a rent threshold for deregulation, incentivizing the mass displacement of long-term rent-stabilized tenants. By requiring proof of no harassment before landlords could make the types of renovations that qualified for IAIs, the CONH pilot program was designed to disrupt a displacement cycle fueled largely by these loopholes in the old rent laws. When HSTPA eliminated the IAI incentive and other loopholes, it also changed the logic of CONH as an intervention.

2016

Community organizations and legal services providers come together to form CATHnyc.



SEPTEMBER 2018

The CONH Pilot Program goes into effect.



SEPTEMBER 2021

The CONH Pilot Program expires. New York City Council can decide to make the program permanent and expand it citywide.



2017

CATHnyc wins a huge victory with the passage of the CONH legislation, creating a three-year pilot program.



OCTOBER 2019

Tenants from from 711 West 180th Street go before the Office of Administrative Trials and Hearings (OATH) to testify against their landlord - the first CONH building to do so.



The second major event that affected the CONH Pilot Program's impact was the global COVID-19 pandemic, which simultaneously brought many construction and government administration processes (including the processing of CONH applications) to a halt, made it dangerous for organizers to engage tenants in person, devastated tenants' income and ability to pay rent, hamstrung landlords' profits, and created a glut of apartments in parts of New York City from which tenants fled. Though very different, both events contributed to a much lower number of CONH applications than HPD and CATHnyc had originally anticipated.

With one year in the pilot program remaining, CATHnyc undertook an assessment of how the CONH Pilot Program has fared in achieving its goal of stopping tenant harassment. To do so, CATHnyc conducted extensive interviews with tenant organizers, community-based outreach workers, and legal services providers; analyzed available data on eligible buildings; and held focus group-style conversations among coalition members. This report outlines the coalition's findings and policy recommendations to expand and improve CONH to ensure it achieves its goals.

Members of Northwest Bronx Community and Clergy Coalition rally outside a building June 28, 2017 before CONH was passed.

*Photo Credit:
Melanie Breault,
ANHD*



GOALS

The goals of the CONH Pilot Program are to:

1. Stop landlords from harassing, displacing, or otherwise depriving tenants of their rights, and
2. Prevent landlords from profiting off of harassment.

METHODOLOGY

In order to evaluate the effectiveness of the CONH Pilot Program, CATHnyc primarily utilized three approaches:

1. **Twelve interviews with organizers, outreach workers, and legal services providers who have direct experience working with buildings going through the CONH application process.**
2. **A review of available data for the 49 buildings that have applied for CONHs through the pilot program.** We primarily used the Association for Neighborhood & Housing Development's (ANHD) Displacement Alert Portal⁹ tool, which aggregates data from public sources such as HPD, DOB, and the Department of Finance. We used the tool to research buildings' histories of sales, evictions, complaints, violations, permits, and litigation. We then developed individual building profiles using that data, with particular attention to data that could indicate harassment. The data points we used as primary harassment indicators were the number of executed evictions,¹⁰ problems reported to HPD¹¹, violations issued by HPD, complaints to DOB¹², and Environmental Control Board (ECB) violations¹³ during the inquiry period per unit for every building with a CONH application to analyze patterns.

Harassment Indicators:

- a. **Executed evictions:** evictions directly show displacement and can indirectly show landlords' use of housing court to harass tenants. This pattern is reflected in the New York City tenant harassment law, which defines "commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit" as harassment.¹⁴
- b. **Problems reported to HPD:** tenants can report problems with apartment conditions such as broken fixtures, lack of heat, hot water, or gas, leaks, or mold via 311. HPD is obligated to investigate the reported problem, but notoriously does not consistently and sufficiently do so.¹⁵ Landlords may actively or passively allow conditions to deteriorate as a harassment tactic: this is reflected in the tenant harassment law as "repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit."
- c. **HPD violations:** When inspecting one reported problem, HPD can issue violations for poor conditions that have not been reported. Violations also serve as verification of a reported problem, even though legitimate problems may not receive violations.
- d. **DOB complaints:** Similarly to problems reported to HPD, tenants can file complaints about unsafe construction, work without a permit, and dangerous building-wide conditions.

While those complaints may be valid, they do not always translate into issued violations.

- e. **ECB violations:** ECB violations validate unsafe construction, work without a permit, and dangerous building-wide conditions. They are adjudicated by the Office of Administrative Trials and Hearings and carry monetary penalties. They are the most direct indicator of construction as harassment.

We collected and analyzed our data on the 49 buildings between July and October 2020.¹⁶

- 3. **Conversations with the CATHnyc coalition.** We presented preliminary findings to the coalition to solicit additional input, then presented draft recommendations for the coalition to respond to, modify, and add to.



Action outside City Hall in Manhattan in October 2017. The sign reads, “Decent housing is a right” in Spanish.

Photo Credit: Melanie Breault, ANHD

FINDINGS

Our data analysis and interviews with tenant organizers, outreach workers, and legal services providers found that while CONH has the potential to be a powerful tool in stopping harassment, it needs to be expanded and adjusted to achieve its full intended impact of stopping landlords from harassing, displacing, or otherwise depriving tenants of their rights.

We heard from two organizers who were able to successfully use the CONH investigation process to engage tenants in organizing around the systemic problems they faced. For example, one worked with tenants to testify in the CONH process, form new tenant associations, and conduct a letter-writing campaign to the landlord regarding repair needs, which improved during the course of the CONH investigation.

Other organizers encountered far more difficulties using CONH as a tool to organize tenants and stop harassment. In some cases, CONH was not applicable despite grave construction-related issues. **In the case of 1356 Willoughby Ave, the landlord removed the front door overnight, introducing a major safety risk to tenants. Because the door's removal did not qualify as demolition and trigger a CONH application, the organizer and tenants were unable to make use of the program as a disincentive for such behavior.** Interviews revealed issues with both program design and program implementation, which we describe in detail below.

The limited number of applications during the first two years of the pilot program was notable and presents a barrier to analyzing the program's efficacy. **As of October 2020, only 49 CONH Pilot Program applications had been initiated, representing just 4.4% of the 1,113 eligible buildings.** In the first nine months of the program prior to the passage of HSTPA, there were 31 applications, and in the nine months between the passage of HSTPA and the beginning of the COVID-19 lockdown, there were just 18. In the eight months following the lockdown, there were zero applications.

Both HSTPA and the onset of COVID-19 clearly

As of October 2020, only 49 CONH Pilot Program applications had been initiated, representing just 4.4% of the 1,113 eligible buildings. HPD had granted 15 applications, owners withdrew 10, and 23 were still pending.

reduced the number of overall applications – if applications had continued at the pre-HSTPA pace, there would have been approximately 84 by the end of October 2020. **As of October, HPD had granted 17 applications, owners withdrew 13, and 19 were still pending.**

Even accounting for HSTPA and COVID-19, the number of applications was significantly lower than both HPD and CATHnyc anticipated. The meaning behind these low numbers is unclear. We cannot measure the number of owners who chose not to apply for a CONH



CONH Pilot Program Applications Timeline

because they assumed it would be denied. Nonetheless, we examined available data for the 49 applications to understand the picture to the extent possible.

We found concerning numbers of harassment indicators for buildings with applications overall, as shown in the **Buildings Analysis: Pilot Program Buildings that Applied for a CONH** tables on pp.15-17. **Almost half of buildings had received at least 100 HPD violations during the investigation period, and the average violations per unit was 10.53.** Across all buildings, there were 9.74 reported problems per unit. Sixteen of the 49 buildings showed evictions by court-ordered marshals during the investigation period, as high as four evictions in a six-unit building, and these were concentrated in buildings whose applications are still pending. One building had an astounding 18 DOB complaints per unit, and all buildings had an average of 0.95 per unit. Buildings received up to 30 total ECB violations, which can indicate serious building and construction safety issues, and up to 2.83 ECB violations per unit. **Those high numbers suggest that CONH is appropriately subjecting those buildings to heightened scrutiny of past and present tenant harassment.**

We expected overall harassment indicators to be lower for buildings that HPD granted CONHs. That was true for three of the five harassment indicators we used: executed evictions per unit, problems reported to HPD per unit, and HPD violations per unit were lower on average for

buildings that received CONHs versus buildings that withdrew their permits (0.02 versus 0.03, 3.79 versus 6.57, and 6.33 versus 8.54). DOB complaints per unit and ECB violations per unit were higher in buildings that received CONHs (0.56 versus 0.49 and 0.44 versus 0.35).

At the same time, deeper investigation into historic data in buildings that were granted CONH permits revealed problematic indicators of harassment. For example, **684 Flushing Avenue appears to have been vacant since 2016, irregularly registered stabilized units, received an illegal conversion violation, and saw multiple lawsuits against the landlord. 4018 15th Avenue received 23 DOB complaints and 30 ECB violations during the inquiry period; their ECB penalties totaled over \$150,000, and the owner has received three new ECB violations since they were granted a CONH.** CATHnyc currently lacks a way to understand the full considerations HPD gave these applications, as HPD did not provide investigative reports as per a Freedom of Information Law (FOIL) request that we submitted on August 25, 2020. HPD gave itself a deadline of March 1, 2021 to fulfill the request.

Below, we detail our findings of how the CONH program did and did not achieve its goals. In response to these findings, we propose corresponding recommendations, which we describe in full in the **Recommendations** section on p. 33.

BUILDINGS ANALYSIS: PILOT PROGRAM BUILDINGS THAT APPLIED FOR A CONH

Granted Applications

Address	Borough	Application Date	Case Status	Reason for Eligibility	# Residential Units	# Marshal Evictions in inquiry period	# Marshal Evictions in inquiry period/res units	# HPD reported problems in inquiry period	# HPD reported problems in inquiry period/res units	# HPD violations in inquiry period	# HPD violations in inquiry period/res units	# DOB complaints in inquiry period	# DOB complaints in inquiry period/res units	# ECB violations in inquiry period	# ECB violations in inquiry period/res units
615 East 179th Street	BX	11/2/2018	Granted 3-5-19	DOB Vacate	9	0	0.00	37	4.11	65	7.22	6	0.67	2	0.22
4018 15th Avenue	BK	12/7/2018	Granted 3-8-19	DOB Vacate	29	0	0.00	0	0.00	5	0.17	23	0.79	30	1.03
690 Cleveland Street	BK	12/14/2018	Granted 6-9-19	BQI, HPD Vacate	6	0	0.00	3	0.50	74	12.33	1	0.17	2	0.33
146 Mulberry Street	MN	12/19/2018	Granted 3-20-19	HPD Vacate	15	0	0.00	7	0.47	36	2.40	5	0.33	0	0.00
24 Charles Street	MN	1/2/2019	Granted 7-24-19	HPD Vacate	18	0	0.00	1	0.06	40	2.22	19	1.06	6	0.33
684 Flushing Avenue	BK	1/16/2019	Granted 7-19-19	BQI, HPD Vacate	16	0	0.00	141	8.81	125	7.81	5	0.31	1	0.06
375 Chauncey Street	BK	2/1/2019	Granted 9-13-19	HPD Vacate	6	0	0.00	2	0.33	3	0.50	7	1.17	17	2.83
2363 Prospect Avenue	BX	2/7/2019	Granted 7-2-19	HPD Vacate, DOB Vacate	26	1	0.04	28	1.08	13	0.50	7	0.27	0	0.00
15 Locust Street	BK	3/4/2019	Granted 7-26-19	BQI	6	0	0.00	95	15.83	177	29.50	6	1.00	1	0.17
498 Putnam Avenue	BK	3/8/2019	Granted 1-31-20	BQI	8	1	0.13	50	6.25	94	11.75	1	0.13	0	0.00
2461 Amsterdam Avenue	MN	4/5/2019	Granted 6-14-19	DOB Vacate	24	0	0.00	1	0.04	2	0.08	6	0.25	15	0.63
221 Thomas Boyland Street	BK	5/8/2019	Granted 1-31-20	AEP	8	0	0.00	95	11.88	107	13.38	0	0.00	1	0.13
1830 2nd Avenue	MN	5/14/2019	Granted 2-14-20	HPD Vacate, DOB Vacate	10	0	0.00	6	0.60	15	1.50	12	1.20	8	0.80
1594 2nd Avenue	MN	5/23/2019	Granted 1-3-20	HPD Vacate, DOB Vacate	8	0	0.00	7	0.88	18	2.25	6	0.75	1	0.13
1596 2nd Avenue	MN	6/7/2019	Granted 1-8-20	HPD Vacate	8	0	0.00	22	2.75	14	1.75	4	0.50	0	0.00
2471 Grand Avenue	BX	6/7/2019	Granted 8-6-20	BQI	42	2	0.05	288	6.86	422	10.05	21	0.50	16	0.38
1534 Selwyn Avenue	BX	9/20/2019	Granted 7-21-20	BQI	73	5	0.07	295	4.04	309	4.23	33	0.45	28	0.38
Average/unit							0.02		3.79		6.33		0.56		0.44

BUILDINGS ANALYSIS: PILOT PROGRAM BUILDINGS THAT APPLIED FOR A CONH

Withdrawn Applications

Address	Borough	Application Date	Case Status	Reason for Eligibility	# Residential Units	# Marshal Evictions in inquiry period	# Marshal Evictions in inquiry period/res units	# HPD reported problems in inquiry period	# HPD reported problems in inquiry period/res units	# HPD violations in inquiry period	# HPD violations in inquiry period/res units	# DOB complaints in inquiry period	# DOB complaints in inquiry period/res units	# ECB violations in inquiry period	# ECB violations in inquiry period/res units
9 Post Avenue	MN	12/18/2018	Withdrawn 5-3-19	BQI	48	0	0.00	198	4.13	165	3.44	3	0.06	7	0.15
66 Vermilyea Avenue	MN	12/18/2018	Withdrawn 6-26-19	BQI	50	1	0.02	368	7.36	280	5.60	0	0.00	0	0.00
390 Wadsworth Avenue	MN	12/18/2018	Withdrawn 6-26-19	BQI	42	0	0.00	441	10.50	363	8.64	19	0.45	4	0.10
247 Audubon Avenue	MN	12/20/2018	Withdrawn 6-26-19	BQI	40	0	0.00	398	9.95	551	13.78	36	0.90	21	0.53
1671 Lincoln Place	BK	2/12/2019	Withdrawn 11-6-19	BQI	16	3	0.19	86	5.38	184	11.50	11	0.69	22	1.38
693 Flatbush Avenue	BK	3/14/2019	Withdrawn 7-9-19	DOB Vacate	12	0	0.00	53	4.42	99	8.25	6	0.50	3	0.25
505 McDonald Avenue	BK	3/18/2019	Withdrawn - date N/A	AEP	6	0	0.00	94	15.67	149	24.83	2	0.33	0	0.00
86 Ft. Washington Avenue	MN	4/25/2019	Withdrawn 3-19-20	BQI	65	0	0.00	266	4.09	531	8.17	13	0.20	9	0.14
1205 Commonwealth Avenue	BX	6/7/2019	Withdrawn 1-3-20	AEP	9	1	0.11	74	8.22	98	10.89	22	2.44	15	1.67
322 East 93rd Street	MN	6/17/2019	Withdrawn 2-19-20	HPD Vacate, DOB Vacate	20	0	0.00	13	0.65	25	1.25	7	0.35	0	0.00
300 Wadsworth Avenue	QN	10/2/2019	Withdrawn 3-23-20	BQI	95	1	0.01	603	6.35	477	5.02	14	0.15	1	0.01
560 West 126th Street	MN	1/27/2020	Withdrawn 2-12-20	BQI	18	0	0.00	110	6.11	107	5.94	3	0.17	6	0.33
556 West 126th Street	MN	1/27/2020	Withdrawn 2-12-20	BQI	18	0	0.00	47	2.61	67	3.72	2	0.11	0	0.00
Average/unit							0.03		6.57		8.54		0.49		0.35

BUILDINGS ANALYSIS: PILOT PROGRAM BUILDINGS THAT APPLIED FOR A CONH

Pending Applications

Address	Borough	Application Date	Case Status	Reason for Eligibility	# Residential Units	# Marshal Evictions in inquiry period	# Marshal Evictions in inquiry period/res units	# HPD reported problems in inquiry period	# HPD reported problems in inquiry period/res units	# HPD violations in inquiry period	# HPD violations in inquiry period/res units	# DOB complaints in inquiry period	# DOB complaints in inquiry period/res units	# ECB violations in inquiry period	# ECB violations in inquiry period/res units
711 West 180th Street	MN	12/19/2018	Pending	BQI	20	0	0.00	1037	51.85	464	23.20	8	0.40	3	0.15
864 Elton Street	BK	1/7/2019	Pending	BQI	6	4	0.67	230	38.33	408	68.00	3	0.50	1	0.17
2474 Valentine Avenue	BX	2/15/2019	Pending	BQI	54	5	0.09	456	8.44	382	7.07	3	0.06	2	0.04
1423 DeKalb Avenue	BK	4/3/2019	Pending	BQI, AEP, HPD Vacate, DOB Vacate	6	1	0.17	261	43.50	319	53.17	24	4.00	20	3.33
212 Willis Avenue	BX	4/12/2019	Pending	DOB Vacate	8	0	0.00	59	7.38	85	10.63	7	0.88	3	0.38
14 East 125th Street	MN	5/24/2019	Pending	BQI, AEP	8	0	0.00	877	109.63	432	54.00	144	18.00	34	4.25
293 Adelphi Street	BK	6/24/2019	Pending	HPD Vacate	6	0	0.00	28	4.67	33	5.50	1	0.17	1	0.17
511 West 151st St	MN	7/12/2019	Pending	BQI	31	1	0.03	162	5.23	158	5.10	13	0.42	8	0.26
1854 2nd Avenue	MN	7/15/2019	Pending	DOB Vacate	25	0	0.00	10	0.40	19	0.76	10	0.40	15	0.60
1 East 124th Street	MN	8/14/2019	Pending	HPD Vacate	10	0	0.00	35	3.50	62	6.20	12	1.20	15	1.50
336 East 166th Street	BX	9/10/2019	Pending	BQI	15	1	0.07	185	12.33	157	10.47	3	0.20	7	0.47
1824 Weeks Avenue	BX	12/10/2019	Pending	BQI	40	2	0.05	198	4.95	303	7.58	9	0.23	13	0.33
3880 Broadway	MN	12/12/2019	Pending	BQI	35	1	0.03	336	9.60	288	8.23	8	0.23	5	0.14
122 Lexington Avenue	MN	1/9/2020	Pending	HPD Vacate, DOB Vacate	6	0	0.00	3	0.50	21	3.50	9	1.50	9	1.50
4 West 16th Street	MN	1/27/2020	Pending	DOB Vacate	16	0	0.00	0	0.00	0	0.00	2	0.13	4	0.25
244 Troutman Street	BK	2/11/2020	Pending	BQI	6	1	0.17	121	20.17	88	14.67	1	0.17	0	0.00
148 Grove Street	BK	2/27/2020	Pending	BQI AEP	6	0	0.00	27	4.50	91	15.17	0	0.00	0	0.00
21 East 115th Street	MN	3/2/2020	Pending	BQI, AEP, HPD Vacate, DOB Vacate	10	0	0.00	0	0.00	14	1.40	13	1.30	10	1.00
10-18 Cypress Avenue	QN	3/10/2020	Pending	DOB Vacate	6	0	0.00	14	2.33	15	2.50	4	0.67	7	1.17
Average/unit							0.07		17.23		15.64		1.60		0.83
Overall averages/unit							0.04		9.74		10.53		0.95		0.56

An analysis of available public data on the 49 buildings that applied for a CONH showed high harassment indicators across the board, and three of five indicators were lower in buildings that were granted CONH permits versus those that withdrew their applications.

WHAT WORKED

Interviews with tenant organizers and staff of community-based organizations who HPD contracted to conduct outreach for the CONH Pilot Program gave us insight into the ways in which the program accomplished the goals of preventing landlords from profiting off of harassment and stopping landlords from harassing, displacing, or otherwise depriving tenants of their rights.

Further analysis of buildings whose owners applied for CONHs through the pilot program shed light on how well the program functioned.

In our interviews, we asked organizers and legal services providers to describe the ways in which the CONH program served its intended purpose. We heard consistent reports that buildings in the CONH Pilot Program and those with active applications showed signs of landlord harassment, that in some cases, the CONH program offered meaningful opportunities for tenant organizing or tenant rights education, and one organization's positive experience working with the assigned HPD investigator.

Buildings that apply for CONHs consistently show signs of harassment, suggesting heightened scrutiny is important.

All the organizations we spoke with, whether contracted by HPD or not, observed cases of apparent harassment by landlords in their building outreach. Circumstances varied: in

one building, the sole remaining tenant said other tenants had been harassed and were either bought out, evicted, or “just moved away.” The building had a large fire, and the tenant told the organizer that either the landlord or the building super was offering buyouts to tenants while the building burned. In other buildings, tenants had already formed associations to organize to improve building conditions in response to landlords neglecting to make repairs. Organizers observed harassment in buildings with active CONH applications as well as buildings that are

Application withdrawals, which represent 43% of applications that had a final outcome, suggest that CONH did impact landlord behavior.

eligible but had not applied.

While our interviews offered qualitative, on-the-ground confirmation that tenant harassment is indeed an issue in a significant number of buildings going through the CONH process, our review of available data on buildings that submitted applications further supported the necessity of heightened scrutiny to prevent landlords from profiting off of harassment.

Many buildings had astounding numbers of problems that tenants reported to HPD during the inquiry period, such as 711 W. 180th Street, a 20-unit building with 1,037 reported problems, or over 50 per unit¹⁷ — the average across all buildings was 9.74 per unit. HPD issued 47% of these buildings over 100 violations during their CONH inquiry period, and they averaged 10.53 per unit. The number of ECB violations, generally serious safety- and construction-related violations that can carry large fines, reached up to 30 in

individual buildings, and 2.83 ECB violations per unit. Overall, buildings with applications averaged 0.95 ECB violations per unit.¹⁸ **This data suggests that the CONH framework is indeed capturing buildings where tenants are at high risk of harassment and these buildings are appropriately subject to scrutiny of the ways landlords treat their tenants.**

As of October 2020, no CONH applications had been rejected, and 13 buildings withdrew their applications before HPD issued a decision. Three of those applications were withdrawn just 12 days after the passage of HSTPA. While we do not know the exact reasons for the withdrawals, it is reasonable to assume that landlords either expected they would not receive the CONH or they calculated that the construction work that required a CONH. **These withdrawals, which represent 43% of applications that had a final outcome, suggest that CONH did impact landlord behavior.**

Victory Rally in November 2017

*Photo Credit:
Melanie Breault, ANHD*





CASE STUDY: **CONH IN TANDEM WITH TENANT ORGANIZING**

Metropolitan Council on Housing

In December 2018, one landlord filed five CONH applications for separate buildings in Upper Manhattan. Metropolitan Council on Housing (MCH) organizer Johanna Monge identified those buildings in her organizing catchment area before the end of the comment period and began conducting outreach and forming tenant

After the passage of HSTPA, which removed much of the incentive structure for landlords to vacate and renovate rent stabilized units, the landlord withdrew four of the five applications, but tenants continued to organize in those buildings. Tenants in the building with an active application were experiencing problems with electricity, the boiler, access to heat

The fact that the landlord applied for CONHs across five separate buildings helped tenants recognize a larger pattern and motivated them to engage with both the CONH process and other organizing tactics.

associations (TAs) in those buildings. She also began a successful partnership with Manhattan Legal Services, who helped her collect affidavits for the CONH process and pursue legal strategies to benefit the tenants.

and hot water, and the intercom system. Collectively, they worked to implement typical organizing tactics alongside the CONH process, such as coordinated calls to 311 and coordinated letter-writing to the landlord with repair needs.

With support from Manhattan Legal Services and Johanna, three tenants testified at the building's OATH hearing.

As they organized, tenants saw improvements in building conditions and repair work pick up. Although MCH wasn't contracted by HPD to do the work, CONH was a useful

supplement to a tenant organizing strategy. The fact that the landlord applied for CONHs across five separate buildings helped tenants recognize a larger pattern and motivated them to engage with both the CONH process and other organizing tactics. MCH continues to work with tenants of buildings owned by that landlord.



Action after CONH was passed in Washington Heights, Manhattan in October 2019.

Photo Credit: Melanie Breault, ANHD

In some cases, CONH provides an opportunity to meaningfully engage tenants in organizing for their rights.

CATHnyc believes that the CONH program will only achieve its goal of stopping tenant harassment by supporting robust tenant organizing to fully engage tenants in the CONH process. Two organizers we spoke with had particularly successful experiences organizing tenants as part of the CONH process. One of these organizers did not work for a group that was contracted to do CONH work, but was nonetheless able to successfully engage tenants in participating throughout the process – see **Case Study: CONH in Tandem with Tenant Organizing**.

In another building that applied for a CONH, an organizer from one of HPD’s contracted CBOs was able to combine contracted investigation work with a partnership with the strong, existing TA he encountered at the building. The organizer contacted the TA president and found out the landlord hadn’t been doing basic repairs. The building had no super and was dealing with poor maintenance, rodent and roach infestations, and a lack of heat. The organizer surveyed the building five times over the course of three weeks and attended a TA meeting, in which he described the CONH process and additional options for pursuing necessary repairs.

These two organizers offered the most positive feedback we heard during our interviews on the effectiveness of the CONH program, and in both instances, the benefit of CONH worked in tandem with other tenant engagement, education, and organizing strategies, such as filing coordinated HPD complaints and a letter-writing campaign to the landlord. **Those interviews highlighted the importance of robust tenant organizing to get full tenant engagement in the CONH process.**

The CONH application process offers the opportunity for tenants’ rights’ education and for tenants to report the harassment they have experienced.

Other organizers reported more limited, but still meaningful benefits of the opportunities the CONH provided. Organizers from two contracted CBOs reported that the process of contacting tenants to ask them questions about their experiences of harassment was an opportunity to educate them on basic tenants’ rights and potentially connect them to other helpful services, though their work with those tenants did not go further.

In a case where a CONH application went before OATH, the CBO praised the work of HPD’s investigator.

We only interviewed one person who worked closely with an HPD investigator, in a case where a CONH application has gone to an OATH hearing. Because the CBO was not contracted, the organizer had no official role in the investigation process. However, she reported that the CBO and tenants’ relationship with the investigator was productive and collaborative. The investigator came to the building to explain the CONH process and her role to tenants, as well as what they could expect. The CBO and their legal services partner reported trusting the HPD investigator to do her job.

WHAT DIDN'T WORK - PROGRAM DESIGN

Interviews and building data also shed light on the failings of the program to prevent landlords from profiting off of harassment and stopping harassment and displacement. Some of these failings result from flaws in the design of the CONH Pilot Program: the eligibility criteria are too narrow; the scope of covered work is too narrow, and some types of covered work have become less relevant; tenants facing harassment in buildings outside of the covered work framework lack avenues to report harassment and hold landlords accountable; landlords have used the CONH requirement as an excuse to forego necessary repairs; landlords face insufficient penalties for work without a permit; and tenants see few tangible benefits from the program.

Eligibility criteria are too narrow.

As of October 2020, just 1,113 buildings citywide were eligible for the CONH process through the pilot program. This is a microscopic number when compared to the 171,000 buildings of three or more units in New York City and is simply insufficient to impactfully and systematically intervene in harassment.

One of the primary factors for eligibility for the pilot program tended to indicate that tenants had already been displaced. Almost half of buildings with applications qualified because of an HPD or DOB vacate order. While these buildings should in fact be

subject to thorough investigation, because vacate orders can follow extensive tenant harassment, the CONH process is triggered after tenants have already been displaced. It is also inherently difficult to engage tenants who no longer live at the address. Expanding eligibility to all multiple dwellings and buildings that are not owner-occupied would subject more buildings to the CONH process before tenants are displaced.

The 49 pilot program applications represent just 4.3% of eligible buildings. **CONH remains an important tool to intervene in and stop harassment, but it should apply universally citywide to achieve the scale of its intended impact.** We also need to design an expanded program to close loopholes and make sure harassment is properly disincentivized across the board. In addition to construction work, **city agencies should consider viable options to require CONHs at other points in the displacement cycle, such as building sales.**

Current determinations and definitions of tenant harassment are insufficient deterrents.

Conversations with CATHnyc organizers and legal services providers revealed that despite expansions of the tenant harassment law in recent years, it is still too difficult to legally establish harassment, which is one of the only ways HPD will deny a CONH without a hearing. Such findings are extremely rare: HPD data on housing court litigations shows only 145 recorded findings of tenant harassment, representing just 6.2% of all harassment cases.¹⁹ Part of the problem stems from definitions of harassment remaining too narrow, despite expansions in recent years.

CATHnyc recommends more comprehensive definitions of tenant harassment in both the CONH investigation process and New York City’s tenant harassment law, as well as more severe consequences for engaging in tenant harassment to ensure that the CONH program effectively stops tenant harassment in its tracks. We propose detailed measures on pp. 34-39 the **Recommendations** section.

The scope of covered work is too narrow.

“Covered work” is the construction and renovation work that the law defines as requiring a CONH in order to receive a permit. For the CONH program to effectively protect tenants from harassment and prevent

CONH remains an important tool to intervene in and stop harassment, but it should apply universally citywide to achieve the scale of its intended impact.

displacement, **covered work must include all work that landlords perform on buildings that may accompany harassment and intent to displace.** Interviews with tenant organizers indicate that the scope of covered work is currently not broad enough, and fails to cover all relevant work that materially alters a building or unit. For example, door removal is not currently considered partial demolition, and yet, in one case where a building owner removed the front door and left the entrance open overnight, this work threatened the safety of tenants and could legally constitute harassment. Furthermore, **the law does not**

currently but should capture all work that qualifies for major capital improvements (MCIs)²⁰; for example, the installation of a new intercom system or elevator may precede the landlord raising rents and pushing tenants out; however, such work does not currently trigger the CONH process. Broadening categories of covered work to all work that materially alters a building and work that qualifies for MCIs will help address the ways in which harassment is occurring now after the passage of HSTPA, which made the original targeting of IAs less relevant.

Landlords have used the CONH requirement as an excuse to forego necessary repairs.

While in many ways the covered work framework needs to be adjusted to comprehensively capture landlord activities that harass tenants, it must also account for landlords using CONH as an excuse to evade repair needs. Tenant organizers and legal services

providers shared numerous stories of landlords using the CONH requirement as an excuse to forego necessary repairs. In some cases, these buildings had fire damage and/or full vacate orders, and claimed that CONH requirements were preventing them from repairing buildings to make them habitable again. Landlords may have had insufficient information about the differences between necessary repair work and covered work. It is also possible that landlords were making disingenuous claims about their inability to conduct repairs. It is imperative that **HPD and DOB make the distinction between optional building alterations and**

necessary repairs abundantly clear to owners so that landlords can no longer use CONH requirements as an excuse to not make repairs. To disincentivize the practice, the law should expand the grounds for denial of a CONH to include a landlord using CONH as justification for not making repairs, and the practice should be added to the legal definition of tenant harassment.



Action in Manhattan on June 28, 2017.

*Photo Credit:
Melanie Breault, ANHD*

Action in Brooklyn, December 20, 2016.

*Photo Credit:
Melanie Breault, ANHD*





CASE STUDY: TWO STORIES FROM BROOKLYN

IMPACCT Brooklyn

1423 Dekalb Avenue

In June 2019, Jeffrey Aronowitz of the Brooklyn-based CBO IMPACCT Brooklyn visited 1423 Dekalb Avenue, whose owner had applied for a CONH on April 3, 2019. Three years prior, the building had experienced a massive fire,

was in the final stages of renovation... On the building's front door there was a wilting HPD paper held on the door with 2 pieces of tape. It was a Request for Comment Regarding an App. For a Cert. of CONH Pilot Pgm. dated 5/10/19."

With no tenants to speak to, Jeffrey was at a loss for how to proceed until

Because the organizer did not work for an organization that was contracted with HPD, he had no access to contact information of previous tenants, and little way to support their participation in the CONH process.

which damaged the adjacent buildings and displaced sixty people.²¹ When Jeffrey reached the door, he noted that the building appeared to be in the final stages of renovation with new floors, windows, walls and a modern façade. According to his records, "the entire building, as well as the 2 adjacent buildings, was vacant and looked like it

he saw nearby neighbors and asked them if they knew what had happened there. They knew a tenant who had been displaced from the building and were able to contact him, and Jeffrey learned that the landlord had offered buyouts to the tenants in the building immediately following the fire. Many tenants, after an

unforeseen tragedy and without a place to live, accepted the buy-out offer.

By the time the CONH investigation and outreach to tenants began, all of the previous tenants had already been displaced.

Because the organizer did not

work for an

organization that was contracted with HPD, he had no access to contact information of previous tenants, and little way to support their participation in the CONH process. At that point, HPD's contract with the Brooklyn organization responsible for investigation had not been finalized, so presumably HPD conducted the investigation. As of October 2020, the application was still pending.

1356 Willoughby Avenue

On July 8th, 2020, Jeffrey met with tenants of 1356 Willoughby Avenue in Brooklyn to discuss multiple issues they were facing. Jeffrey recorded the issues and how the tenants had communicated their needs to management. Two months later, the tenant organizer received emails from members of the TA asking what to do about their recently removed front door. The entire front façade had been removed along with the front door and was left

unfinished and open overnight. Tenants had received no notice of this work, no information from management, and no keys for the new door.

“The tenants were left an entire night with no front door and the failure of the CONH program to contain this situation led to significant harassment.”

Jeffrey reached out to a DOB advocate and HPD's CONH program director because 1356 Willoughby Avenue was on the CONH Pilot Program eligibility list. The program director explained that removal of the front door was not covered work and therefore this incident did not fall within the scope of the program. Jeffrey said, “If the program had covered it, the landlord would have registered the construction to be done and tenants would have been aware. Tenants would have been able to review their rights and received HPD contact information had there been any questions or issues. **The tenants were left an entire night with no front door and the failure of the CONH program to contain this situation led to significant harassment.** It created a situation where the tenants and organizers were powerless. There has yet to be a consequence to the landlord.”

Tenants in eligible buildings that have not applied for a CONH lack avenues to report harassment and hold landlords accountable.

For tenants in buildings that are eligible for CONHs but have not applied for one, there are no opportunities to report harassment. As in the case of 1356 Willoughby Avenue, tenant organizers we interviewed shared that tenants are experiencing harassment in buildings that are eligible but have not applied for a CONH and they are frustrated by the lack of avenues to report and intervene in that harassment. In some cases, landlords are foregoing necessary repairs. In others, landlords are keeping units vacant – potentially with the intent to combine adjacent units and set much higher rents, one of the remaining loopholes in rent stabilization laws. This type of warehousing is a signal of tenant displacement, but tenants witnessing this tactic have no redress within the current CONH framework. The program must be strengthened and expanded to intervene in harassment processes that fall outside the current CONH framework.

Firstly, **there should be mechanisms for reporting harassment in all buildings that are eligible for CONHs. HPD should refer buildings with multiple reports of harassment to its Anti-Harassment Unit and the Tenant Harassment Prevention Task Force** for further investigation and action and create a pathway for buildings with reports of harassment to be prioritized by city agencies for repairs and enforcement. Finally, **contracted CBOs should be compensated for broad engagement and organizing**

work in CONH-eligible buildings, including collecting evidence of and reporting harassment, rather than solely in buildings that have an active application.

Landlords face insufficient penalties for work without a permit.

An updated CONH program design must also address the glaring loophole of eligible building owners entirely circumventing CONH requirements by conducting work without a

134 buildings that are eligible for the CONH Pilot Program received violations for doing work without a permit, which undermines CONH's ability to ensure landlords have not harassed tenants before performing optional construction work.

permit. Available data showed that landlords are doing construction work without necessary permits, which undermines the efficacy of CONH. We found that 134 eligible buildings were issued a total of 314 ECB violations for work done without a permit while the pilot program was in place. Among all possible ways the design of CONH might fail to be effective, work without a permit is possibly the most pernicious: if landlords move forward construction or renovation without necessary DOB permits, it completely undermines the program. The Stand for Tenant Safety Coalition helped pass Local Law 156 of 2017, which increased penalties for work without a permit to 21 times the filing fee and is a strong model for ensuring work without a permit is sufficiently penalized²² However, of the \$1,086,165 in penalties that were imposed via the 314 violations we found, only \$206,300.71

– 19% – has been paid.²³ **City agencies must ensure that those penalties are being properly applied and that collection is enforced.**

Additionally, three buildings that were granted CONH applications had received ECB violations for doing work without a permit during the investigation period. Two additional buildings received violations during the investigation period – one after an application was granted, and another just seven days after the owner withdrew their application. We also spoke to outreach workers who heard complaints from tenants about construction work being done without a permit. We believe that **a violation for doing work without a permit during the investigation period should be grounds for automatic denial of a CONH application, and when violations are issued after a CONH is granted, the CONH should be revoked.** Additionally, we recommend that **the definition of tenant harassment be expanded to include a single instance of work without a permit.**

Tenants see few tangible benefits.

The design of the CONH program does not provide tenants sufficient tangible benefits. When a building is going through a CONH investigation, HPD and CBOs ask tenants to give their time to provide comments and potentially testify in court. During our interviews, multiple organizers raised the issue that the CONH process in itself does little to get those tenants the repairs they need or remedy harassment they have faced; it can be unclear how they benefit from their participation. This makes it difficult to engage those tenants in commenting or testifying. As we described in the **Case Study: CONH in Tandem with Tenant Organizing**

section, one building with an active CONH application did see the landlord make repairs and improve building conditions as a result of tenant organizing and participation in the CONH process. However, in other instances, organizers described difficulty engaging tenants because of the lack of tangible benefit. It is important for tenants to receive some benefit for the time and energy they give to participating in the CONH process and even more important for them to receive material remedies when they have been subject to harassment. We recommend that **lawyers be able to intervene on behalf of tenants** and make them party to OATH hearings, that **tenants be able to receive material benefits as part of the outcome of an OATH hearing,** and that cures for denial of a CONH include a **one-year rent rebate** for all tenants who lived in the building during the investigation period.

WHAT DIDN'T WORK - PROGRAM IMPLEMENTATION

In addition to uncovering flaws in the CONH Pilot Program's design, interviews and building data pointed to aspects of the program's implementation that weakened the program's ability to meet its goals of preventing landlords from profiting off of harassment and stopping harassment and displacement. CONH will only achieve its intended impact if it is accompanied by robust tenant engagement and participation in the process and clear opportunities for tenants to assert their rights to stable and dignified housing. However, our interviews revealed that HPD's implementation of the CONH Pilot Program failed to support and incentivize the organizing that would enable full tenant participation. Outreach workers and organizers reported numerous challenges in their successful fulfillment of their role. For example, they described confusing and protracted communication with HPD at various stages of the CONH process, which hindered efficient and effective implementation of the pilot program. They also encountered barriers to effectively communicating with current and former tenants.

CATHnyc encountered related challenges when attempting to assess whether HPD appropriately granted CONHs; HPD did not share documentation of their investigations and decisions. At the same time, our research showed problematic indicators of harassment in buildings that received CONHs, suggesting the possibility that HPD is granting CONHs

despite histories of tenant harassment in those buildings.

HPD's implementation of the CONH Pilot Program fails to support and incentivize the necessary organizing for full tenant participation.

At the time the 2017 law passed, CATHnyc secured a commitment from then-Deputy Mayor Alicia Glen that funding would be provided for 1-2 community organizers in each covered community district to fully engage tenants in eligible buildings before, during, and after a CONH process. Instead, HPD funded just three nonprofit organizations to do CONH outreach work citywide, and instead of supporting supplemental organizing or education work, the contracts essentially outsourced HPD's typical CONH investigation work to the nonprofits. Because HPD framed and funded the role of contracted organizations narrowly, organizers and outreach workers reported feeling restricted in the scope of work they were able to accomplish and the extent to which they could work with tenants in pushing back against harassment they may have been facing.

The work of contracted CBOs should not be duplicative of HPD's regular investigation; it should be supplementary. **Funding should compensate CBOs for ongoing and in-depth tenant engagement throughout the lifecycle of a CONH application, as well as in buildings that are eligible but have not applied for a CONH.** Local CBOs are able to build on their roots in individual neighborhoods to develop meaningful connections with tenants and support them in organizing to stop harassment and displacement via the CONH process. **Funding for organizing should be**

structured at a local and neighborhood-based scale - rather than borough or citywide and should be sufficient to scale up the CONH program citywide.

At various stages of the CONH process, communication with HPD is confusing and protracted, hindering the ability of contracted CBOs to effectively support tenants.

We heard in several conversations that CBOs could not get the information they needed from HPD to effectively engage tenants. HPD gave contracted CBOs certain information they needed to investigate buildings, such as the contact information of current and former tenants. But CBOs lacked other important information, like the reason the building was eligible for a CONH or what work the landlord applied to do. Organizers reported having trouble answering related questions tenants had about the CONH process in their building, as well as questions about how the case would be decided. HPD should ensure collaborative and transparent communication with community groups, by **providing contracted CBOs with the landlord's full application. HPD should also prioritize language access so that tenants receive complete information.**

Organizers also struggled with HPD's reporting requirements, saying that the criteria for investigative reports were rigid and narrow, that they ended up spending too much time communicating back-and-forth with HPD staff, and were left at a loss on how to comply. CBOs were unclear on what happened with applications after submitting tenant comments or a report. We recommend that **HPD relax**

burdensome and overly rigid reporting requirements and notify all parties about each development of an application.

In addition to difficulty communicating around the investigation work, the back-and-forth required to effectuate contracts meant that a year of the pilot program passed before any CBOs could do their investigation work. This meant that for the first year of the pilot program, no CBOs were given tenant contact information or funded to do work. **HPD should actively work with funded groups to execute contracts quickly** and allow CBOs to work in CONH buildings immediately.

CBOs encountered barriers to effectively communicating with current and former tenants.

When an owner applies for a CONH, they must provide contact information for current and previous tenants. This information is relayed to contracted CBOs conducting investigations, but non-contracted CBOs, or CBOs whose contracts are still pending, cannot access it, making it near impossible to reach tenants who may have been harassed to the point of displacement. In the many buildings that are completely vacant by the time the owner applies for a CONH, those CBOs have no viable method of contacting the only people who could provide input and giving tenants who may have experienced harassment a way to report their experience. **HPD should create a way for non-contracted CBOs to access the contact information of current and former tenants** to avoid this roadblock. Such groups could sign data privacy agreements to protect individual information.

From those who did have access to tenant contact information that building owners supplied, we heard mixed reviews of its efficacy: some said the information seemed accurate and they were able to effectively contact tenants, and others said they had difficulty connecting with tenants and confirming the contact information's accuracy. We recommend a requirement that **landlords sign their CONH applications, certify that everything is true and accurate, and have the statements notarized.**

Organizers and outreach workers reported additional difficulties effectively communicating with tenants. For example, we heard that when some attempted to do in-person outreach to tenants, landlords would not grant them entry, barring their access to tenants. We recommend **extending the comment period for inquiries from 45 to 60 days** to allow more time to contact tenants and that **all investigations incorporate door-to-door canvassing**, whether conducted by HPD or a CBO.

Data on buildings who received CONHs shows problematic indicators of harassment, but we lack access to investigative reports to know why HPD approved their applications.

Analysis of data from buildings whose owners were granted CONHs through the pilot program raises red flags about transparency in CONH application decisions and the possibility that owners who harassed tenants are receiving CONHs. For example, HPD granted multiple CONHs for buildings that data shows were vacated due to fire damage. According to the CONH pilot program design,

repairs to fix fire damage should not require a CONH. Additional, non-necessary work should be highly scrutinized in instances of a full vacate order. If CONHs were deemed necessary in order to repair fire damage, the distinction between necessary repairs and non-necessary work must be further clarified, with only the latter subject to CONH requirements.

One building that received a CONH, 684 Flushing Avenue, seems to have been vacant since 2016, after being deregulated and receiving an illegal conversion violation; the data also revealed multiple lawsuits against the building's landlord.²⁴ 4018 15th Avenue in Brooklyn received 23 DOB complaints and 30 ECB violations during the CONH inquiry period. Violations included work without a permit and unsafe construction and attached penalties totaled \$155,850. Since the CONH was granted, its owner has received three more ECB violations.²⁵ Other buildings that received CONHs had histories of deregulation, conversion to luxury housing, violations for illegal conversions, lawsuits against the landlord, work without a permit, and unsafe construction. After submitting a FOIL request on August 25, 2020, CATHnyc awaits HPD's investigative reports showing their justification for granting these applications, but publicly available data gives cause for concern. **HPD should make all documentation and reports of their investigations public** so the CONH approval or denial process is transparent.

RECOMMENDATIONS

Our recommendations emerged from our three research methods: interviews with organizers, outreach workers, and legal services providers; analysis of available data on buildings with CONH applications; and conversations with CATHnyc. Some recommendations came directly from interviews and we developed others to address problems that arose in those conversations or previous coalition meetings. Additionally, we reviewed notes from previous coalition conversations on the efficacy of CONH implementation, the original policy positions of CATHnyc when advocating for the CONH program, and CATHnyc comments during HPD's issuance of CONH rules and concept paper for its contracts with CBOs for outreach. We presented all draft recommendations to the full CATHnyc coalition for review, input, and approval.

Individual recommendations fall into five overarching categories:

A Expand CONH so it protects tenants citywide and make the program permanent.

B Update the program design to better achieve goals of preventing tenant harassment and displacement; close loopholes.

C Ensure the program incentivizes and facilitates community-based organizations to organize and fully engage tenants in the CONH process.

D Enable tenants and organizers to effectively participate in the CONH investigation and overall process.

E Create opportunities for tenants to see tangible, positive outcomes as a result of their participation in the CONH process.

FULL RECOMMENDATIONS

A Expand CONH so it protects tenants citywide and make the program permanent.

Tenants across New York City are facing harassment, and yet, only 1,113 buildings citywide were eligible for the CONH Pilot Program; a mere 4.4% of those buildings applied for a CONH. For CONH to be an effective anti-harassment mechanism, it must apply to buildings citywide.

1. **Expand the program citywide and make it permanent**, provided these recommendations for improvements are incorporated - no more geographic limits.
2. **Expand qualifications for CONH to all multiple dwellings and dwellings that are not owner-occupied.** This includes all buildings subject to HPD registration: those having three or more residential units or smaller buildings where a landlord does not live.²⁶ CONH requirements in special districts and anti-harassment areas offer a precedent for such an expansion.
3. City agencies should **consider viable options to require CONHs at other points in the displacement cycle, such as building sales.**

B Update the program design to better achieve goals of preventing tenant harassment and displacement; close loopholes.

Our research showed that tenants are suffering harassment that does not fall within the existing framework of covered work. Landlords performing partial demolitions or other work that does not require DOB permits, foregoing necessary repairs, warehousing units, and doing work without DOB permits are all examples of harassment that are not currently addressed by the pilot program's design. The program must be altered so that all forms of harassment are proactively identified before tenants are displaced, and tenants have ample opportunities to report harassment no matter where or when they are facing it.

General recommendations for the CONH process:

1. Broaden categories of covered work to **all work that materially alters a unit or building**, excluding necessary repairs.
2. **Ensure that work that will qualify for MCIs is covered, except where such work is a necessary repair.** This includes building modifications and additions that do not require permits via DOB. Implementing this recommendation may require the participation of NYS HCR, who would require a CONH before approving an MCI application for landlords to raise rents.
3. **Ensure that landlords are aware of the difference between covered**

work and repair work with clear information about the distinctions and their obligations via the HPD website and other materials.

4. When a landlord is denied a CONH for one building, **apply this denial to all buildings in their portfolio.**
5. Require landlords to **sign** their application, **certify** that everything is true and accurate, and **have it notarized.**
6. Redesign cures to require **40% of units to be evenly split between 20, 30, 50, and 60% AMI**, to mirror existing units in size and distribution and to be accessible to people who are undocumented. This reflects CATHnyc's original position on creating a cure that successfully disincentivizes tenant harassment and creates meaningful affordable housing in cases where cures are necessary.
7. Work with DOB to **ensure that violations are issued and penalties are collected** for work without a permit in any CONH-eligible buildings.

Recommendations for how harassment is considered in the CONH process:

8. Ensure HPD is aware of all legal and agency findings of harassment for automatic denial of a CONH: **proactively and regularly collect findings of harassment** from HP and 7A cases and from HCR. Make the agency's process for doing so explicit in CONH rules.
9. **Expand the grounds for denial of CONH without a hearing and revoke**

CONHs if they have already been issued if:

- a. DOB finds that a building owner has **failed to abide by a Tenant Protection Plan (TPP)**;
 - b. The New York City Commission on Human Rights (CCHR) finds that an owner has **engaged in discrimination** in violation of the New York City Human Rights Law²⁷;
 - c. The building received a **7A appointment**; or
 - d. The building receives an **ECB violation for doing work without a permit.**
10. Expand the grounds for denial of a CONH to include evidence of a **landlord using CONH as justification for not making repairs.**
 11. Ensure **all categories of legally-defined harassment are being considered in investigations** since the law was expanded. Evidence of any harassment covered by the legal definition and our proposed expansion to the legal definition should be grounds for denial of a CONH.
 12. Broaden the definition of harassment for the purpose of the CONH program to **include vacancies**, even when investigators cannot get in contact with previous tenants. Investigate the warehousing of apartments, current or previous, for the purpose of deregulation or setting first rents (combining or dividing units). Account for vacancy as

a form of harassment in cases where:

- a. **landlords have intentionally left units vacant for more than three months,**
- b. **where more than 30% of units are empty, or**
- c. **where more than half of existing tenants have moved out during the investigation period.**²⁸

13. **Make harassment found through the CONH process automatic grounds for a C level harassment violation.**

*Recommendations for broadening the harassment law*²⁹

14. **Require landlords disclose any findings of harassment in all future leases.**

15. **Widen the definition of tenant harassment to include:**

- a. **a single instance of work without a permit.** Currently, the law considers multiple instances or work without a permit to qualify as harassment.
- b. **using CONH as justification for not making repairs.**
- c. **material misstatements in CONH applications,** including omissions and inaccuracies in tenant contact information.
- d. **when a landlord has not legally evicted a tenant, any effort or agreement to move new tenants/occupants (including themselves) into an apartment without the express consent of all current lawful occupants.**

e. **a single frivolous eviction proceeding.**

f. **failure to comply with a TPP or to provide a TPP or Construction Bill of Rights.**

g. **acts or omissions calculated to, or that would predictably lead to, a vacate order.**

h. **a landlord entering or forcibly entering an apartment without advance consent of tenants or a court order,** except for certain emergency matters.

16. **Increase the statute of limitations for harassment** from one year to six years.

17. **Remove the requirement that section G of the definition, the general catch-all portion of harassment, be tied to at least one violation of record at filing of the petition.**

C Ensure the program incentivizes and facilitates community-based organizations to organize and fully engage tenants in the CONH process.

Rather than fund the 1-2 community organizers per district CATHnyc had pushed for, HPD funded just three nonprofits citywide to do CONH outreach work. Furthermore, the narrow framing of those contracted groups' role in the CONH process meant they were essentially serving as outsourced HPD investigators. To stop citywide harassment and displacement of tenants, tenants will need to act collectively to identify and address harassment in their buildings. To enable them to do this work, CBOs' work must be framed and adequately funded to support an organizing approach to working with tenants, and organizers must be funded at a local level.

1. Compensate CBOs for organizing-related work and broad engagement with all eligible buildings and not just buildings with an application, including:

- a. collecting evidence of and **reporting harassment at any time**;
- b. doing **general know-your-rights trainings**, including on what constitutes harassment;
- c. **educating tenants on the CONH program**;
- d. **conducting tenant association meetings** to improve building conditions, eliminate harassment, and ensure tenant rights generally;

- e. **ongoing, in-depth work with tenants** throughout the entire course of an investigation;
- f. **monitoring for harassment after a CONH has been approved**; and
- g. **ensuring successful implementation of cure agreements**.

Additionally, **HPD should explicitly encourage CBOs to organize tenants** and frame their contracted work as an opportunity to do so.

- 2. HPD should structure funding at a **local and neighborhood-based scale**. The number of funded organizers must be sufficient to scale up the CONH program citywide and support broad tenant engagement in eligible buildings.

D Enable tenants and organizers to effectively participate in the CONH investigation and overall process.

Communication issues with HPD at various stages of the CONH process made it difficult for contracted groups to initiate their investigations in a timely manner, for contracted and non-contracted groups to reach current and former tenants of certain buildings, and for contracted groups to answer tenants' questions about the process and to report their investigation findings with ease and timeliness. Information about the CONH process must be readily accessible and available to all relevant parties, and lines of communication between HPD, outreach workers, and tenants must be strengthened and clarified to support comprehensive identification of harassment and effective displacement prevention.

1. Work with CATHnyc to create a way for **non-contracted CBOs to access the contact information** of current and former tenants and landlords. Such groups could sign a data privacy agreement to protect individual information.
2. Extend the **comment period for inquiries to 60 days instead of 45**.
3. Incorporate **canvassing door-to-door**, in addition to phone outreach, into all investigations, including those done by HPD.
4. Include **information on the type of work a landlord is applying to do** in notices to all parties (including tenants) about CONH applications. **Notices given to contracted organizations**

should also include the landlord's full application. All current and former tenants as well as community groups should receive **notice of an OATH hearing**, notice of a **final determination and its outcome**, the **grounds for the determination, details of any cure**, copies of any **settlement agreements**, and notices of any **suspension or rescission of a CONH**.

5. **Prioritize language access** at all steps of the process. All points of contact with tenants must accommodate speakers of languages other than English in a way that allows those tenants fully equal participation in the CONH process. **Post and send all notices in multiple languages.**
6. Require HPD to be **transparent in their decision making**, including making **all documentation and reports from investigations public**.
7. Actively work with community groups to **execute contracts quickly and make it possible for CBOs to begin working in CONH buildings immediately**.
8. **Relax burdensome and overly rigid reporting requirements** for community groups.
9. Ensure **collaborative and transparent communication with community groups** so they have insight into the full workings of the CONH process and can effectively educate and work with tenants.

E Create opportunities for tenants to see tangible, positive outcomes as a result of their participation in the CONH process.

While tenant participation through comments and court testimonies is critical to the CONH investigation process, tenants see few tangible benefits from the program as it is currently designed. These insufficient benefits make it difficult to motivate tenants to participate in the process to the extent necessary to comprehensively identify and stop harassment. Adjustments to the CONH program would provide tenants tangible remedies for harassment they have experienced.

1. Create a **pathway for CONH-eligible buildings to be prioritized by city agencies** for repairs and enforcement.
2. **Allow lawyers to intervene on behalf of tenants and make them party to OATH hearings.** HPD should cooperate with legal service providers to negotiate for tangible benefits for tenants as a result of any settlements between HPD and a landlord.
3. Allow tenants to **receive tangible benefits as part of the outcome of an OATH hearing.**
4. Create a **process for reporting and recording instances of tenant harassment for any eligible building,** not just buildings going through an active investigation. This information should remain on record in case the owner submits an application. If harassment is reported, **HPD refers the building to its Anti-Harassment Unit and the Tenant Harassment**

Prevention Task Force and notifies CATHnyc. Tenants should be notified about the CONH program as soon as a building becomes eligible and given instructions on reporting harassment and contacting a local community organization.

5. Expand cures to include a **one-year rent rebate** for the most recent 12 months of rent paid **for all tenants who lived in the building during the investigation period.**

CONCLUSION

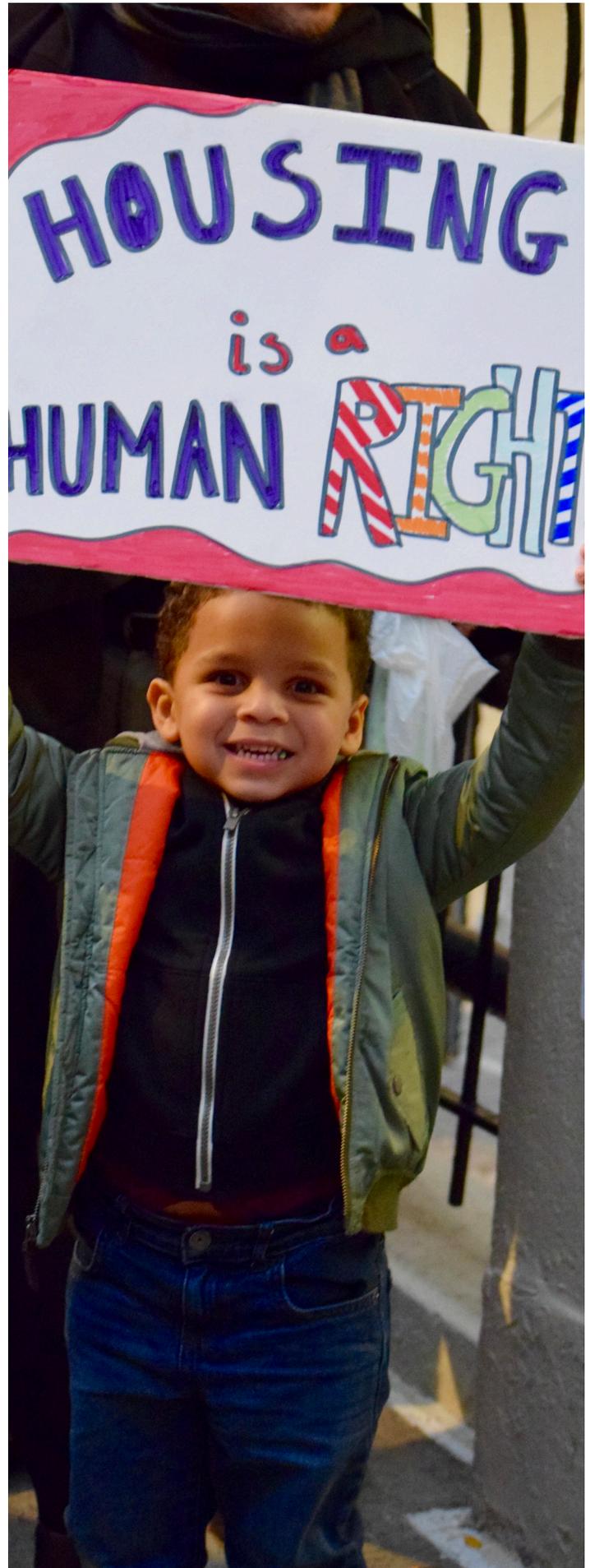
CATHnyc’s evaluation of the first two years of the CONH Pilot Program revealed that it is clear that CONH has the potential to be an effective tool in stopping tenant harassment, but to achieve its intended impact, it will need to be both expanded and adjusted.

Despite limited data and unforeseen events that greatly impacted the program, we found initial evidence of success: CONH appears to be appropriately targeting buildings that have clear indications of harassment, there are signs of CONH intervening in landlords obtaining permits for non-essential construction work, and there are examples of CONH successfully supplementing tenant organizing.

At the same time, the program is both too limited in scope to achieve its intended impact, and new legislation must address loopholes, misaligned program design, and implementation shortcomings. CATHnyc has proposed a detailed series of recommendations to address these issues. **If elected officials and HPD meaningfully incorporate those recommendations into a permanent, citywide CONH program, we believe it can have an enormously effective impact in stopping wide scale tenant harassment in New York City. ■**

Action after CONH was passed in Washington Heights, Manhattan in October 2019.

Photo Credit: Melanie Breault, ANHD



ENDNOTES

¹ <http://www.hcc-nyc.org/aboutus/history.htm>; http://www.cunylawreview.org/wp-content/uploads/2017/05/Vol-20_10-Meehan.pdf

² <http://www.cunylawreview.org/wp-content/uploads/2014/09/05-Single-Room-Occupancy-copy.pdf>

³ NYC Administrative Code §27-2004(48)(d), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-60039>

⁴ https://www.anhd.org/sites/default/files/conh_harassment_flyer_comprehensive.pdf

⁵ https://www.anhd.org/sites/default/files/nyc_legal_definition_of_harassment.pdf

⁶ For more on Area Median Income (AMI), see <https://www1.nyc.gov/site/hpd/services-and-information/area-median-income.page>.

⁷ 28 RCNY §10-02, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-55676>

⁸ HSTPA did not completely eliminate IAIs, but it greatly restricted the amount landlords can increase rents by using them.

⁹ <https://portal.displacementalert.org>

¹⁰ Original data from <https://data.cityofnewyork.us/City-Government/Evictions/6z8x-wfk4>

¹¹ Original data from <https://data.cityofnewyork.us/Housing-Development/Housing-Maintenance-Code-Complaints/uwyv-629c/data> and <https://data.cityofnewyork.us/Housing-Development/Complaint-Problems/a2nx-4u46>

¹² Original data from <https://data.cityofnewyork.us/Housing-Development/DOB-Complaints-Received/eabe-havv>

¹³ Original data from <https://data.cityofnewyork.us/Housing-Development/DOB-ECB-Violations/6bgk-3dad>

¹⁴ NYC Administrative Code §27-2004(48)(d), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-60039>

¹⁵ See the 2015 report by New York City Comptroller Scott Stringer, “Audit Report on the Department of Housing Preservation and Development’s Handling of Housing Maintenance Complaints.” <https://comptroller.nyc.gov/reports/audit-report-on-the-department-of-housing-preservation-and-developments-handling-of-housing-maintenance-complaints/>.

¹⁶ One building—1065 Jerome Avenue in the Bronx—newly applied for a CONH application between data collection and publishing, and is not included in this report.

¹⁷ In buildings with pending applications at the time of this report, numbers may have increased since we collected them.

¹⁸ See **Buildings Analysis: Pilot Program Buildings that Applied for a CONH** on pp.15-17

¹⁹ <https://data.cityofnewyork.us/Housing-Development/Housing-Litigations/59kj-x8nc>.

²⁰ Individual apartment improvements (IAIs) are renovations in rent-stabilized apartments that allow landlords to raise rents more than the standard increase that the Rent Guidelines Board sets each year for all regulated apartments. Prior to the passage of the Housing Security and Tenant Protection Act (HSTPA) in June 2019, landlords utilized IAIs as a widespread tactic to dramatically increase rents and push them out of regulation entirely; this

loophole incentivized mass displacement of long-term rent regulated tenants. HSTPA largely eliminated this incentive structure for IAIs. It did not, however, dramatically limit major capital improvements (MCIs), which landlords still use to raise rents for all apartments after making building-wide renovations or upgrading systems. Both IAIs and MCIs are regulated by the state agency Housing and Community Renewal (HCR), whereas the CONH program is administered by the city agency HPD.

²¹ Gwynne Hogan, *DNAinfo.com*, May 9, 2017. City Offers Little Help to Rent-Stabilized Tenants Left Homeless by Fire, <https://www.dnainfo.com/new-york/20170509/bushwick-dekalb-avenue-fire-brooklyn-rent-stabilized-tenants/>

²² <http://www.standfortenantsafety.com/sts-dob-platform>

²³ To find numbers of ECB violations for work without a permit, imposed penalties, and amount paid, we filtered ECB violations issued since September 28, 2018, for those issued to buildings on the CONH Pilot Program eligibility list with violation descriptions containing the words “WORK WITHOUT” or “WORK W/O.” The analysis was conducted on November 25, 2020. Data source: ECB Violations, New York City Open Data Portal, <https://data.cityofnewyork.us/Housing-Development/ECB-Violations/y9uf-suid>.

²⁴ The data we reference on 684 Flushing Avenue can be found on DAP Portal at <https://portal.displacementalert.org/property/3017220023>

²⁵ The data we reference on 4018 15th Avenue (aka 1475 41st Street) can be found on DAP Portal at <https://portal.displacementalert.org/property/3053450051>.

²⁶ As per NYC Administrative Code § 27-2097(b) <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-61160>

²⁷ See Policy Recommendation #2 of VOCAL-NY and TakeRoot Justice’s October 2020 report, “VOUCHERS TO NOWHERE: How Source of Income Discrimination Happens and the Policies That Can Fix It,” for additional context on the importance of incorporating harassment based on discrimination that occurs in the process of tenants applying for housing: <https://static1.squarespace.com/static/5edbd1827536f464a00c32de/t/5f5ebbbd-52f87c233c995070/1600043968206/Vouchers-To-Nowhere.pdf>, p.12.

²⁸ Recommendations (b) and (c) are adopted from attorneys Brian J. Sullivan and Jonathan Burke in their Winter 2013 article in the CUNY Law Review, “Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis,” available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1344&context=clr>.

²⁹ NYC Administrative Code §27-2004(48)(d), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-60039>

³⁰ Full rules regulating the CONH Pilot Program are available in Rules of the City of New York (RCNY) Title 28 §53, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NY-Crules/0-0-0-109650>.

Thank you to all the tenant organizers, outreach workers, and legal services providers who shared your experiences with us.

Members of the Coalition Against Tenant Harassment (CATHnyc)



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