



TENANT HARASSMENT SHOULD NOT PAY

An Evaluation of the Certificate of No Harassment Pilot Program



December 2020
Full Recommendations



COALITION
AGAINST
TENANT
HARASSMENT



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.**