

Public Housing Preservation Trust Draft Voting Procedures

Public Comments & Responses

On October 14, 2022, the New York City Housing Authority (NYCHA) released the “Public Housing Preservation Trust Draft Voting Procedures” to govern future conversions to the New York City Public Housing Preservation Trust, as required by the NYC Public Housing Trust Act. Upon release of the draft procedures, NYCHA initiated a 41-day public comment period to solicit input from residents and members of the community. Public comments were accepted through several means, including email, mail, and in person. The public comment period included eight public meetings at which oral and written comments were accepted. NYCHA’s responses to the comments are below, organized by topic, and the full text of all written comments can be found at on.nyc.gov/trust-final-voting-procedures.

In response to the public comments submitted, NYCHA has made several changes reflected in the Final Voting Procedures. Summaries of all written and oral comments are below along with NYCHA’s responses to such comments in italics.

Sequence and Selection of Development Votes

Multiple comments were made about the process by which developments will be selected to vote. One commenter inquired if Tenant Association Presidents will play a role in the process and another commenter suggested that voting should require a tenant petition to initiate the process.

NYCHA is in the process of developing an approach for identifying the first several developments for votes. Just as with other programs and past approaches to this type of criteria, there are numerous factors that could be considered, such as physical needs, resident support, feasibility of relocation, and more. The opportunity for residents to vote on which funding stream they want at their development, whether it is the Trust, PACT/RAD, or Section 9, ensures that residents have the final decision.

Voter Eligibility

Multiple commenters spoke about voter eligibility, including opinions about the eligible age. Comments expressed support for keeping the age at 18 and others called to reduce the eligible age to 16. Other comments inquired about safeguards NYCHA will use to ensure that only eligible voters’ votes are being counted and to prevent individuals from voting multiple times. Another commenter questioned how rent arrears or other lease violations may impact an individual’s eligibility to vote.

NYCHA has decided to keep the age for voter eligibility at 18, the standard outlined in the Trust legislation. A resident 18 or older as of the final day of the voting period is eligible to vote so long as they are included as a permanent member of their Household Composition or are considered a (co-)Head of Household; other considerations, such as outstanding rent arrears or lease

violations, do not compromise voter eligibility. To verify voter eligibility, NYCHA will use information gathered from the lease and household composition to identify those eligible to vote and will work closely with the election administrator to apply election security safeguards to ensure election integrity.

Engagement Period – Information to be Provided to Residents

Commenters suggested additional information that residents may need during the engagement period as they make their decisions. Suggestions included additional information on municipal bonds and other financing to be pursued under each option, physical needs at the development, the scope of repairs included in each option, and information on tenant rights, including how each option would impact rent calculations and the annual recertification process.

NYCHA agrees with the need for robust and comprehensive engagement materials to be shared with all residents at developments that are undergoing a vote. Sections 3 and 4 of the Final Voting Procedures list required materials and information that will be included during each 100-day engagement period. For each option, NYCHA must provide information on resident rights, a description of the construction standards under each option, a description of the roles of NYCHA and residents during construction, the impact on existing capital work, and the future management structure of the site. NYCHA will also provide a description of the needs at the site—including a physical needs assessment — how financing can be used to address the needs of the development under each option, as applicable, a copy of the ballot, and an explanation of how voting will proceed. In addition to the changes included in the Final Voting Procedures, NYCHA will use the suggestions and feedback provided in the comments received as well as continued dialogue with residents, resident leaders and advocates, to inform the development of outreach materials and information to be provided to residents.

Engagement Period – Methods for Communicating to Residents

Commenters submitted ideas on how NYCHA can effectively engage residents ahead of a vote. Commenters identified communication mediums which they feel are not effective, the need for clear and plain language in written materials as well as strategies for credibly providing information to residents, including the use of tenant advisors and other independent third parties. Several commenters made specific suggestions, including suggesting additional on-site meetings during the engagement period, having local resident leaders review outreach materials and run outreach meetings, specifying use of door-to-door outreach, providing additional mailings to residents, utilizing plain language, complying with applicable language access requirements. One commenter suggested the inclusion of more advocacy groups in the initial planning stage instead of the local resident leadership alone. Another commenter felt the Proposed Voting Procedures did not specify how outreach will be conducted during the engagement period, how these efforts will be monitored for efficacy, what responsibilities are held by local resident leaders and what steps NYCHA will take to ensure uniformity of engagement plans.

NYCHA agrees with the need for effective engagement that surpasses NYCHA’s efforts to-date and has made several changes in the Final Voting Procedures in response to the comments received. Section 2 of the Final Voting Procedures, entitled “Engagement with Resident Leadership,”

explains how local resident leadership can contribute to a tailored and effective voter engagement strategy and materials at their development. Changes to this section include the explicit consideration in the engagement process of community-based organizations who can bring their expertise in reaching residents as well as provide additional resident advocacy during the engagement planning process.

In lieu of requiring two separate mailings, the procedures instead require NYCHA utilize various channels to reach residents, including mailings, e-mails, robocalls, and posting at developments. NYCHA believes relying on multiple communication channels is more effective than sending duplicate mailings to residents. NYCHA will utilize plain language when preparing communication materials to be provided to residents and will translate such materials as provided in Section 7 of the procedures.

Separate from and in addition to the procedures, NYCHA will be focusing on its engagement approach for this process and will continue improving engagement and communication across the organization. Monitoring the different elements specified in “Voter Outreach” will be critical to refining engagement strategy throughout the election process. The extensive requirements in Sections 2, 3, and 4 set the minimum standard of engagement, but NYCHA anticipates additional engagement in part as a result of the tailored, development-specific engagement plans developed with input from local resident leadership.

Engagement Period – Duration of Engagement

Several commenters addressed the length of the engagement period. Of the comments explicitly mentioning this time, most suggested to lengthen but there was some support for the period as-is. One comment indicated it was not clear when during the 100-day period that engagement would begin and end.

NYCHA has decided to maintain the engagement period—the minimum time between the Notice of Vote and voting period during which NYCHA will undertake a period of robust resident outreach and education—at 100 days. NYCHA believes that 100 days is the appropriate minimum period needed to properly inform voters. Furthermore, the Final Voting Procedures were amended to clarify that resident engagement is to begin at least 100 days before the voting period begins, and such engagement will continue until the voting period begins.

Election Administrator

Commenters generally supported the procurement of a third-party election administrator and several commenters had suggestions or questions about the selection process and the administrator’s role. NYCHA received suggestions on ensuring the competency of the selected administrator, including choosing an administrator with experience in citywide elections and demonstrated cultural competence. Several commenters suggested that residents should be involved in the procurement process for the administrator or have insight into how the selected administrator was chosen. Others suggested that there must be a method of oversight to ensure the administrator is managing the election appropriately and a path of recourse if residents do not feel

the administrator has acted appropriately. One commenter inquired about staffing during the election period and the role, if any, of NYCHA staff.

NYCHA agrees with the need for a third-party election administrator with expertise and experience in managing elections at this scale. NYCHA also agrees that experience holding elections in the NYC area and interacting with voter populations similar in composition to NYCHA residents are two valid factors, among others, for judging competency of a potential administrator. As noted in the Draft and Final Voting Procedures, NYCHA remains committed to working with a third-party administrator to oversee each development election. The Final Voting Procedures do not require resident involvement in the selection of the administrator, but NYCHA will explore the feasibility of including resident input and feedback into the procurement and oversight of the Election Administrator. Regarding the anticipated use of NYCHA staff, employees will primarily be responsible for undertaking outreach required during the voter engagement period and NYCHA will defer to the election administrator on the extent to which NYCHA staff should support the administrator during the voting period.

Voting Methods

Commenters offered a variety of opinions on the voting methods included in the draft procedures. Some were against in-person voting altogether, while others believed the in-person option should be expanded. Multiple comments requested that dates, times, and locations for in-person voting sites be specified in the Final Voting Procedures, while another commenter suggested the procedures specify how residents will obtain mail-in ballots. One commenter suggested the inclusion of on-premises ballot boxes for residents to submit their votes. Another commenter emphasized the need to “clearly define how many weekdays, weeknights, and weekends in-person voting will be available and for how many hours each.” Finally, it was suggested that NYCHA include a post-marked ballot in all residents’ rent statements.

The Trust Act sets a minimum standard for voting methods: residents must have the option to vote, in person, by mail, and online. Within those methods, there is room to define the parameters of each. NYCHA will rely on the expertise of the third-party election administrator who will oversee the voting process to determine the propriety of ideas like ballot boxes or extended hours, as well as how best to distribute ballots to those residents who wish to vote by mail. Additionally, the locations of in-person voting will vary across different development sizes and configurations – for example, if ballot boxes are utilized it may be determined that more than one box should be located at developments of a particularly large size. Accordingly, the duration, availability and location of each voting method will be clearly defined for residents at each site where a vote is scheduled to take place, including in the initial formal notice of vote provided to all residents as required by Section 3 of the Final Voting Procedures.

Voting Period

Commenters opined on the length of the voting period, with several commenters suggesting a longer voting period—most commonly 30 days—and one commenter suggesting a shorter, one-to-two day voting period. It was also suggested that all options, including in-person voting, be

permitted during the entire voting period. One commenter stated the procedures should specify when mail-in ballots must be received during the voting period.

NYCHA has extended the voting period in the Final Voting Procedures to 30 days. Online and mail voting will be available for all 30 days and in-person voting will be available for the final 10 days of the voting period. NYCHA believes the 30-day voting period, including 10 days available for in-person voting, is sufficient to ensure robust participation from residents and fair access to the ballot. Regarding when mail-in ballots must be received, paragraph 5(g)(1) of the procedures provides “[m]ail-in ballots will be considered timely if they are postmarked no later than the final day of the Voting Period” and “[m]ail-in ballots postmarked after the Voting Period will not be counted.”

Voting Options

Various sentiments were raised about the three voting options to be proposed to voters. A small number suggested adding an option, specifically presenting the opportunity for resident management corporations. Another commenter requested that an option for “fully funded Section 9” be added to the ballot while, relatedly, an additional commenter stated the NYCHA should explain how repairs would be funded under the “status quo” option. Two commenters and a joint letter suggested that PACT/RAD be removed as an option for voters to choose from, reducing options available to residents from three to two. PACT/RAD was also the subject of a few additional comments, with commenters split between critiquing the program, inquiring about the program, and praising the program. Several commenters requested that the option to reject the Trust and PACT/RAD not be labelled as “status quo” as initially proposed due to the potentially negative connotation of this phrase.

The Trust and PACT/RAD are viable strategies for financing critical and comprehensive improvements at developments. Therefore, the Final Voting Procedures retains the three options to be included in all votes held pursuant to the procedures: in addition to joining the Trust or joining PACT/RAD, residents will have option to reject both options and remain in Section 9. In response to several commenters objecting to the use of the phrase “status quo” when describing the third option, this phrase has been removed. The Final Voting Procedures do not include a reference to Resident Management Corporations (RMC) because RMCs do not impact funding streams available to perform comprehensive repairs at developments, which is the purpose of the resident vote, but, rather, impact day-to-day operations at developments. In addition, they are currently an available path under multiple options.

Voter Turnout Threshold

The minimum voter turnout required to certify the results of an election, initially proposed at 10% of Heads of Households at a development, received numerous comments. Commenters provided an array of alternative values; the highest proposed value was 100%, with several other commenters suggesting values such as 75%, 66%, 50%, 30%, and 20%. Many other commenters agreed that the threshold should be raised without specifying another value, indicating that 10% turnout is too low for a vote of this magnitude. Finally, a few commenters suggested the minimum threshold not be universal but instead be site-specific based on a development’s size.

In response to the initial threshold set out, other commenters raised concerns about how NYCHA plans to reach minimum level of voter engagement, and what should follow if this threshold is not met.

In response to public comments and with additional supporting analysis, NYCHA has doubled the minimum threshold of voter turnout to 20%. Although NYCHA has not held these types of elections before, there is data from the last 14 years of federal, state and local elections from which NYCHA can analyze turnout at NYCHA developments. With the intersection of each development and election year as an individual data point, there were 4,298 individual elections used for the turnout analysis. Across that data set, the median voter turnout was 20.7%. Presidential election years had relatively higher turnout—up to 44.5% in 2016—and Mayoral election years had relatively lower turnout—down to 13.9% in 2017.

Several commenters noted that Mitchell-Lama cooperatives have higher turnout thresholds in their elections. The Mitchell-Lama elections cited are proposals to deregulate a building, dissolve the existing legal structure of the cooperative, and convert the apartments to the private market. Unlike Mitchell-Lama elections, all options residents would be considering ensure permanent affordability and thus do not deregulate apartments or introduce market rate apartments or rents as is the case with Mitchell-Lama elections, which makes the NYCHA resident votes held pursuant to the voting procedures substantially different.

Regardless of the threshold, NYCHA will strive for maximum turnout through extensive levels of outreach and engagement referenced in Sections 2, 3, and 4 of the procedures. Although NYCHA is confident that a combination of universal outreach standards and tailored engagement at each voting site will engage voters beyond the minimum threshold, the Final Voting Procedures specify that in the event where the threshold is not reached, the development will remain with its current funding structure and NYCHA may hold another election at a later date. NYCHA also intends to reassess the threshold over time as additional data become available. The revised procedures include a provision requiring a published analysis of voter participation after elections at six developments. NYCHA will use the additional data to reassess the threshold if necessary.

Finally, NYCHA feels the use of a percentage achieves the goal of tailoring the minimum threshold to the size of the development.

Winning Vote Determination and Implementation

Some commenters felt the winning vote option should require a majority of votes. One commenter expressed concern that paragraph 6(f)(2) of the procedures, which provides “NYCHA shall be bound by the winning option subject to applicable federal law and regulation,” provides NYCHA the option to disregard the result of a resident vote and pursue a non-winning option, such as PACT/RAD.

Prior to the release of the Proposed Voting Procedures and again when reviewing the public comments, NYCHA considered the methodology for determining the winning vote option. In addition to the suggested majority determination, NYCHA also considered utilizing ranked-choice voting. In light of how election results have generally been determined, including in presidential

and TA elections, as well as the feasibility of holding potentially repeat and runoff elections, the Final Voting Procedures maintain the originally-proposed methodology of determining the winning option as that which received the most resident votes. NYCHA will continue to monitor the use of ranked-choice voting in other elections and may consider revising these procedures if it is determined in the future that residents prefer an alternative methodology for determining the winning vote option.

As provided in Section 6 of the procedures as well as the Trust Legislation, NYCHA is bound by the results of a tenant election. Paragraph 6(f)(2) does not permit NYCHA to disregard a vote result but, rather, explicitly binds NYCHA to residents' chosen option. The cited reference to federal laws and regulations concerns federal approval which must be sought and received prior to conversion, in the event residents choose either to join the Trust or PACT/RAD. Upon a vote to convert, NYCHA will seek such federal approval in furtherance of implementing residents' chosen option.

Vote security and challenges

Multiple suggestions were made to ensure that upcoming elections are run as securely as possible, including in-person vote monitoring and confidential ballots. NYCHA's role in maintaining a secure and unbiased election was the subject of one comment that requested clarification on bans against campaigning in the vicinity of in-person voting sites and how NYCHA plans to address voter intimidation or other breaches of election security. Commenters also raised concerns about election security by suggesting improvements to the challenge process, primarily through increasing and clarifying the timeframe for claiming a challenge to election results. In this same vein, one commenter inquired about specific procedures for raising a challenge and, in the case where an election is deemed to be tainted by rule violations, how NYCHA will proceed.

The security and integrity of the elections remains a top priority in the Final Voting Procedures. NYCHA will work closely with the election administrator, who will have demonstrated experience overseeing secure elections. NYCHA has modified the final procedures to include the potential for ballot watchers in consultation with resident leaders and the election administrator. NYCHA has also modified the provision on challenges to clarify that eligible voters may raise challenges to the election administrator at any time during the 30-day voting period, as well as the specified 72 hours after the vote has closed. Specific protocols for registering and responding to challenges will require collaboration from the election administrator and will be made available to residents once a vote is proposed at their development.

Relocation

Commenters expressed concern about relocation that may occur to facilitate the construction envisioned under each option. Some residents fear relocation would impact their health and stress levels, especially for seniors living in NYCHA developments. Additionally, more information was requested about NYCHA's strategy for relocation – commenters asked for clarity on relocation sites, as well as a broader strategy to accommodate Trust-related relocations for renovations across 25,000 units.

NYCHA understands and recognizes the inconvenience and stress that can result from temporary relocations and therefore will only consider such moves when required to complete extensive construction work at developments, such as work to building infrastructure or systems.

Under the Public Housing Preservation Trust, the burden of relocation is intended to be as small as possible. The Trust legislation specifies that NYCHA will cover the costs of relocation, which includes moving expenses, and that tenants will have a guaranteed right of return. As part of reducing the burden, NYCHA will prioritize relocation to units within a resident's own development or as close to the development as possible; site-specific details will be included in the information shared with residents during the engagement period. Relocation rights will be protected by agreement with each household.

The legislation's cap of a maximum 25,000 units that can join the Trust caused some commenters to question how NYCHA could manage the sizable number of resident relocations necessary to facilitate work on such a large scale. However, NYCHA does not intend to hold simultaneous votes to reach the maximum 25,000 units in one round of voting. Rather, NYCHA will develop a development vote schedule in consideration of various factors, including ensuring residents at developments are provided the individual time and resources necessary to satisfy NYCHA's obligations during the outreach period.

Resident Organizing Rights Under 24 CFR 964

A few commenters reflected on how voting options such as the Public Housing Preservation Trust interact with residents' 964 rights. These comments indicate that more clarity is needed on how these rights, which derive from the Section 9 regulations, can be maintained after conversion to Section 8.

NYCHA understands the significance of resident participation and opportunities provided in federal regulations, including the importance of resident organizing. The rights protected in 24 CFR 964 have been guaranteed to all Trust sites through the Trust legislation. Section 631(4) of the Public Housing Preservation Trust Act specifies that "the Trust shall act in accordance with the full requirements of part nine hundred sixty-four;" Section 631 also enumerates other rights, including establishing a resident council and continuing existing resident councils. The legislation text, in full can be accessed through the following link: <https://legislation.nysenate.gov/pdf/bills/2021/S9409A>.

Repairs and General Conditions

Several commenters noted the poor conditions at NYCHA developments and the need for significant repairs at their sites. Commenters also stated that NYCHA's response to deteriorating conditions has been insufficient.

NYCHA recognizes these comments and agrees that the conditions are not acceptable. In 2019, NYCHA signed a federal oversight agreement with the US Department of Housing and Urban Development, the US Attorney's Office for the Southern District of New York, and the City of New York that outlined several areas where the agency failed to meet its obligations. These areas

include elevators, heating, lead, mold, pests, waste, and apartment inspections. Since 2019, NYCHA has worked to address these issues, but a significant amount of work remains.

Many of the conditions that plague NYCHA developments are a function of the agency's capital shortfall. Most NYCHA sites have infrastructure that is past its useful life and require immediate replacement, but the agency does not have sufficient funding to do so. While most privately-owned buildings replace large infrastructure on a rolling 20-year cycle, most NYCHA sites have missed two or three of these cycles. The Public Housing Preservation Trust was designed to address these capital needs directly.

General Comments and Suggestions

NYCHA received various comments which fall beyond the voting process provided in the Proposed Voting Procedures. Examples of such comments include questions regarding NYCHA funding sources as well as procurement and auditing policies and controls, improvements to how NYCHA publishes policies and procedures, general suggestions regarding resident engagement, and ideas for the agency's compliance with building codes.

NYCHA acknowledges these comments and will take each into consideration as part of its ongoing operations.