Recapturing Mitchell-Lama developments:
Tools for Preserving Affordable Housing

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Tenants & Neighbors

The mission of Tenants & Neighbors is to build a powerful and unified statewide organization that empowers and educates tenants; preserves affordable housing, livable neighborhoods, and diverse communities; and strengthens tenant protections.

Tenants & Neighbors is a grassroots organization that helps tenants build and effectively wield their power to preserve at-risk affordable housing and strengthen tenants' rights in New York. Through organizing, education, intensive leadership development, grassroots mobilization, and strategic policy and legislative advocacy, Tenants & Neighbors is building a strong and unified tenant movement that has the knowledge and power to effect real change.

Mitchell-Lama Housing

The Mitchell-Lama program was created by State Senator MacNeil Mitchell and State Assembly Member Alfred Lama in 1955 in order to provide affordable housing to low and middle income families in New York State. Through the program, landlords receive low interest loans, tax exemptions, and government subsidies in exchange for keeping rents affordable. Widely believed to be a highly successful affordable housing program, tens of thousands of units of Mitchell-Lama housing have been lost because the housing constructed was not permanently affordable.

Tenants & Neighbors has organized for decades to preserve Mitchell-Lama developments and has led legislative and policy advocacy all throughout New York to preserve the Mitchell-Lama program.

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New Tools to Preserve Mitchell-Lama Housing

In recent years, an old corporate structure, known as the Article XI Housing Development Fund Company, has taken on a new function both in the preservation of Mitchell-Lama housing and in the recapture of former Mitchell-Lama housing as affordable housing for low and moderate income tenants. Article XI was enacted in the late 1960s and gives the City of New York the discretion to award valuable tax exemptions to buildings that provide some measure of affordability.

The Article XI program is flexible enough to allow the city's Department of Housing Preservation and Development (HPD) to negotiate regulatory agreements that are appropriate to individual buildings' unique financial, market, and physical conditions. This flexibility is important, given the wide range of conditions that exist among the city's Mitchell-Lama and former Mitchell-Lama housing stock. But the same flexibility means that tenants cannot assume that the financial and regulatory restructuring that takes place in an Article XI conversion will automatically be the best outcome for their development. The key to an Article XI conversion is not to be found in the provisions of Article XI itself, but in the regulatory agreement that is negotiated for each individual building.

Tenants & Neighbors believes that the success of Article XI as a strategy for preserving and recapturing Mitchell-Lama housing depends on the full and informed participation of tenants in the conversion process. We also believe that the development of a good menu of subsidy and regulatory options from which individual deals can be assembled can facilitate both good preservation deals and good tenant participation. And finally, we believe that the project-basing of Section 8 vouchers in order to provide a long-term subsidy for deep affordability should be a key element on that menu.

In this report, we sketch the present state of, and possible future directions for, Article XI conversion of Mitchell-Lama and former Mitchell-Lama rental buildings in New York City as a means of starting the discussion of how to achieve the best possible outcomes for the city's low and moderate income tenants and housing stock.

The Housing Crisis in New York City

New York City has had a severe affordable housing crisis for decades, but in recent years the shortage has intensified into a new crisis as long-standing policies to promote affordability have begun to fail. This includes the conversion of nearly half the city's Mitchell-Lama rental stock to unsubsidized rent-stabilized or unregulated apartments in the last ten years, as well as the deregulation of more than 100,000 – and probably more than 200,000 – rent-stabilized apartments during the same period. These factors contributed to a decrease of 385,000 apartments from the total stock of affordable apartments available to low-income tenants (with incomes up to twice the federal poverty line) from 2002 to 2006.

New affordable housing is being built, but not on the scale necessary to compensate for these losses, and often the new affordable housing constructed is targeted at income levels that are too high for the people most affected by these losses. More than half of New Yorkers are "rent-burdened," meaning they pay more than 30 percent of their incomes on rent. And prices keep rising. The mayor's ambitious affordable housing plan, discussed in more detail later in this report, takes a major step towards rectifying New York City's affordable housing crisis, but does not have the capacity to build brand new housing for individuals or families earning less than $35,000 a year.

Ultimately, it will take a major new federal policy initiative to address the housing crisis in New York City and other major cities around the country. But until that happens, preserving existing affordable housing is the most important strategy to mitigate the harm that is being done to low- and moderate-income tenants. From Staten Island to Kingsbridge, Tenants & Neighbors waged many campaigns to preserve Mitchell-Lama rental developments as well as other forms of subsidized housing. Although some of our campaigns have been successful, 31,414 units of Mitchell-Lama rental housing have left the program in the past twenty years. This represents nearly half of the city's Mitchell-Lama rental housing stock. Some of the former Mitchell-Lama housing stock is still affected by stop-gap affordability measures, which help create opportunities for recapturing them as long-term affordable units.

As New York City affordable housing policy moves forward to address the needs of low and moderate income tenants, current and former Mitchell-Lama developments must be included in the city's broad strategy of affordable housing preservation. Recapturing former Mitchell-Lama developments and preventing the loss of additional units should be a major component of the city's current strategy for maintaining sustainable affordable housing.

This report proposes an innovative preservation strategy to re-capture units lost through Mitchell-Lama buy-outs using Article XI conversions *and* project-basing enhanced vouchers. This strategy will provide benefits, such as keeping tenants in place and preserving affordable housing without requiring new construction. This strategy also could reverse the negative impacts the enormous loss of Mitchell-Lama developments has had on diverse and livable communities throughout the city.

Mitchell-Lama Buyouts

Since its inception in 1955, the Mitchell-Lama program has created 66,000 subsidized rental housing units and 69,000 co-op apartments. In the past ten years, the city has lost nearly half of the Mitchell-Lama rental stock for low and moderate income tenants. In the next ten years, barring no change in policy, the city could lose as much as 37 percent of its remaining Mitchell-Lama rental housing stock.

Since 1990, 78 Mitchell-Lama developments have left the program, totaling 31,414 units. Manhattan has had the lion's share of the losses, losing 35 developments encompassing 14,324 units. Next, is the Bronx with a loss of 29 developments, encompassing 9,417 units. Brooklyn has lost 8 developments with 4,292 units, and Queens, six developments at 3,391 units. As shown in the table below, over half of all these lost units went into rent-stabilization, but there were still 14,700 units that became market-rate apartments out of 31 developments, where 22 of those developments had tenants that qualified for enhanced vouchers.

	Bronx	**Brooklyn**	**Manhattan**	**Queens**	**Staten Island**	**Total**
Units Still in Mitchell-Lama	8,929 (22)*	14,318 (23)	5,133 (16)	3,273 (8)	989 (2)	32,642 (71)
Out: Vouchers and rent stabilization	767 (3)		882 (5)	734 (2)		2,383 (10)
Out: Vouchers but no rent stabilization	1,156 (4)	1,176 (3)	8,125 (15)	916 (1)		11,373 (23)
Out: Rent stabilization but no vouchers	7,155 (21)	3,063 (4)	2,264 (10)	232 (1)		12,714 (36)
Out: No rent stabilization or no vouchers	339 (1)	43 (1)	3,053 (5)	1,509 (2)		4,944 (9)
Out: Total	9,417 (29)	4,282 (8)	14,324 (35)	3,391 (6)		31,414 (78)

* Number of developments in parenthesis.

When an owner decides to leave the Mitchell-Lama program through a "buy-out," what happens to the tenants depends on the subsidy structure and the date that the building was first occupied. Depending on these factors, tenants may receive some protections. If the building was occupied before 1974, the units automatically go into rent-stabilization. If the building was occupied after 1974, the units become market-rate. If there is federal financing, tenants who income qualify will be able to receive enhanced vouchers, a protection that is tied to the tenant and not to the unit. If the building was occupied after 1974, and there is no federal financing, tenants receive no protections. Even though some tenants are protected through rent-stabilization laws and enhanced vouchers, they often still experience displacement pressure because of loopholes in the rent laws that incentivize harassment.

Many former Mitchell-Lama developments have two, and sometimes even three, different types of tenants living under the same roof. In former Mitchell-Lama developments that went into rent-stabilization, there are tenants who are rent-stabilized and tenants who are market-rate. While there have been efforts at the state level to change the law moving forward to ensure that in the future, all Mitchell-Lama developments go into rent stabilization after exiting the program, a major priority for affordable housing policy should be recapturing former Mitchell-Lama developments that became primarily market-rate developments due to a short-sighted piece of law. In former Mitchell-Lama developments that became market-rate, there are tenants with enhanced vouchers, tenants who are market-rate, and occasionally tenants who are protected by a Landlord Assistance Program (LAP) that is negotiated upon the owner's buy-out for tenants who didn't income qualify for enhanced vouchers. Unfortunately for tenants, these LAP agreements usually expire and landlords are not required, in most instances, to continue these agreements, thus ultimately displacing long-term tenants.

Enhanced vouchers are administered by city, state, and federal agencies. When a Mitchell-Lama development receives federal subsidies and a "buy-out" occurs, the enhanced voucher program is triggered as a protection for tenants. Tenants qualify for an enhanced voucher if they meet certain income qualifications, and thereafter the voucher is tied to the tenant and no longer to the unit. Thus when the tenant leaves the unit, the unit is no longer subsidized. HPD currently administers 5,403 enhanced vouchers citywide, many in former Mitchell-Lama developments.

According to data published by HPD, the enhanced voucher program covers a range of incomes. There are 2,801 tenants receiving vouchers who are Extremely Low Income, 1,295 are Very Low Income, 1,021 are Low Income, and 286 earn over 80% of the Area Median Income. As shown by the data, enhanced vouchers are currently being allocated to low and moderate income tenants that need the financial protections to be able to stay in their homes post-Mitchell-Lama buy-out.

Tenants who live in Mitchell-Lama developments that enter rent stabilization after an owner buys out (only buildings that were occupied prior to 1974) are subject to rent increases as voted on annually by the New York City Rent Guidelines Board. Rent stabilization laws, however, have many loopholes that often end up leaving tenants either displaced by escalating rents or forced out due to landlord harassment. Rent stabilized apartments can also become deregulated once the legal regulated rent on a vacated apartment reaches $2,500 or more per month, and when the apartment is occupied by tenants whose total annual household income exceeds $200,000 in each of the two preceding calendar years. These caveats are a real threat to the long term affordability of former Mitchell-Lama developments, as we have seen happen many times, most severely in Manhattan and Brooklyn over the last 10 years.

Many buildings nearing the end of their affordability contract became targets for speculators who overleverage the buildings, as was the case in the Putnam coalition - five high rise buildings in Upper Manhattan and Roosevelt Island that are all owned by the same company. In addition, both tenants living in rent-stabilized units and those with enhanced vouchers are vulnerable to landlord harassment.

Article XI

Today, Article XI is a tool that allows the city to provide a discretionary tax exemption for affordable housing projects owned by a housing development fund company as dictated by the Private Housing Finance Law of the State of New York. The program provides for a payment in lieu of taxes based on HPD's review of the project's financing. For preservation projects with existing tax exemptions, HPD will consider the current level of exemption as a key factor in continuing a tax abatement. The exemption term can be for a maximum period of 40 years and is typically coterminous with a regulatory agreement.

There have been criticisms of the use of Article XI in the past. The use or misuse of Article XI has been seen as part of the larger debate surrounding tax benefits for affordable housing, and Article XI conversions have been viewed as a great benefit to owners and not to tenants. However, nothing in the law or the regulations regarding Article XI requires that owners receive large benefits and tenants receive little. Article XI is simply a tool and many of the criticisms are directed at how this tool has been used. This report will propose methods to change the way Article XI is currently used in order to benefit tenants, and preserve affordable housing for low and moderate income tenants in our city's changing neighborhoods.

Article XIs have been negotiated upon the end of a Mitchell-Lama contract at West Village Houses in Manhattan and the Promenade Apartments in the Bronx. This tool has also been used to recapture lost affordable units in a former Mitchell-Lama in the Lower East Side, Lands End I, and a former rent-stabilized development in Crown Heights, the Brooklyn Jewish Home and Hospital.

Article XI promises long-term affordability for current tenants and the tenants who follow them. It prevents the displacement of long-time residents from their communities and the tremendous loss of social capital that occurs when neighborhood residents are displaced after rents increase. It keeps families together, provides economic stability, and preserves tenants' informal, yet crucial social networks on the ground. Article XIs give tenants an opportunity to negotiate on certain terms or conditions before indicating they approve of the agreement. Article XI provides a safety net for tenants from the harmful effects of gentrification and displacement pressures.

Motivated and organized tenants are key to the success of Article XI conversions. The creation of long-term affordable housing allows successful tenant organizations to thrive and keeps tenants engaged in matters pertaining to their homes. Tenants & Neighbors plays a key role in ensuring tenants are well organized, informed, and knowledgeable about their buildings and rights as tenants in New York City.

Article XI has been used in the past to convert rental properties, as well as abandoned buildings, into affordable housing cooperatives. Using Article XI as a tool to maintain affordability in expiring Mitchell-Lama developments is still a relatively new concept that HPD has been using to persuade owners via lucrative tax incentives to keep their properties affordable for current tenants. The majority of Article XI regulatory agreements are for a period of 25-30 years, providing a mechanism to secure affordability for former Mitchell-Lama units for the long-term. However, buildings that are not subsidized can also be considered for Article XI conversion.

To use Article XI as a preservation tool, we recommend that City Councilmembers, along with the city's housing agency, propose this tax subsidy and agreement to the owner, and then determine what the agreement would encompass and how many units it would cover. We strongly recommend that the City Councilmember work closely with the tenant association or tenant body to determine the specific terms of the agreement, and then begin negotiations with the owner.

Article XI is a flexible tool that can be tailored to particular developments, and must be approved by the Finance Committee in the City Council and by individual Councilmembers. It is frequently combined with other types of subsidies, such as Low Income Housing Tax Credits, to create a complete package of incentives to attract owners and developers.

As explained in this report, Article XI can be a strong tool for re-capturing former Mitchell-Lama developments because the regulatory agreement can be negotiated with the city housing agency and tailored to the specific development. Recent Article XI agreements have been thirty years in length, and have protections that mimic rent-stabilization without vacancy deregulation or income targeting for incoming tenants.

For the owners of Mitchell-Lama developments, Article XI provides lucrative tax incentives. It prevents high rates of tenant turnover, and instead, helps to create a community of tenants who genuinely care about the building and a tenant population that is more likely to work with their owners and/or management on issues that arise. Article XI can also help owners make improvements to their buildings or necessary repairs and/or renovations without having to reach into their own pockets.

In "Housing New York," the de Blasio administration pledges to preserve or build 200,000 units of affordable housing. The administration has made affordable housing a top priority, outlining various strategies that can be used to help make New York City more affordable in the 117-page plan, released in May 2014. The plan suggests different tools that can be used to recapture lost Mitchell-Lama units and those such tools could be attractive options for buildings experiencing challenges paying their property taxes or water and sewer charges. We believe Article XI can be one of those tools.

Project-Basing Vouchers

Project-based vouchering is a relatively new tool that the U.S. Department of Housing and Urban Development (HUD) is using for federally subsidized buildings that receive Rental Assistance Payments or Rent Supplement.

HUD has placed limits on the number of project-based vouchers it will allow in states that do not conform to the Moving to Work (MTW) program for public housing authorities. Since MTW only allows exemptions from voucher rules and greater flexibility on how federal dollars are allocated, an administrative law change on the federal level is necessary to increase the amount of project-based vouchers in New York State. Tenants & Neighbors is currently working with allied congressional members to make the necessary change.

However, project-based vouchers have been used as a preservation strategy for project-based Section 8 developments in other cities to protect tenants in place in addition to renewing the HUD contract. Project-basing vouchers would allow affordable units to remain affordable, even after the current tenant leaves. Currently, if an enhanced voucher tenant leaves his or her apartment, the unit becomes a market-rate apartment. Through project-basing, the tenant would still receive an enhanced voucher, but the unit would maintain its affordability and protect not only the current tenant, but future tenants. It would also prevent the overall loss of additional affordable units over time.

If this strategy is adopted, it would require all affected parties to work closely with HUD and HPD to develop a process for project-basing enhanced vouchers. For former-Mitchell-Lama developments, an Article XI agreement would put the market-rate units into a regulatory agreement and mandate the project-basing of vouchers for the enhanced voucher tenants in the development. This would be a comprehensive approach to recapturing former Mitchell-Lama developments as part of the city's affordable housing stock.

A Sure-Fire Combination

Through a combination of Article XI agreements *and* project-basing enhanced vouchers, there is a real opportunity to recapture affordable units in former Mitchell-Lama developments. We encourage all City Councilmembers who have former Mitchell-Lama developments in their districts to explore this option with the city's housing agency and with the tenants in the target buildings. The result would re-establish as many as 14,700 units of affordable housing that would require no new construction and would include federal and city funding streams.

Case Studies

Lands End I: L&M Development Partners and Nelson Management bought Lands End I (257 Clinton Street) in December 2014, a former 255 unit Mitchell-Lama development that was occupied after 1974. In February 2015, the owners and HPD found a way to bring half the units in Lands End I into a regulatory agreement. Under an Article XI agreement with the city, the owners were able to offer 50% affordability to income-qualified tenants in the development. Lands End I is the first example of an owner re-entering an affordability program after leaving the Mitchell-Lama program eleven years ago in 2004. Since the building was occupied after 1974, the units became market-rate upon the buy-out and income eligible tenants received enhanced vouchers. HPD received the City Council's approval for an Article XI agreement at Lands End I that would give the owner a 40-year property tax abatement in exchange for preserving 128 units of affordable housing. The building's remaining 128 units will continue to rent at market-rate. Twenty-five of the re-captured units will be at 140% Area Median Income, and 103 units will be for tenants making up to 165% of the Area Median Income. Though we would have liked to see a 100% affordability deal, and one that included lower Area Median Income targeting for lower incomes, this is a promising model for future use.

The Putnam Portfolio: The Putnam portfolio, five former Mitchell-Lama developments in Harlem, East Harlem, and Roosevelt Island, is owned by Urban American, and recently, Brookfield Properties came in as a partner. They include Riverside Park Community (3333 Broadway), Metro-North/River Crossing (420 East 102nd Street), The Schomburg Plaza/Heritage (1295 Fifth Avenue), The Miles and The Parker (1990 Lexington Avenue), and Roosevelt Landing/Eastwood (540 Main Street). This portfolio houses an estimated 4,000 families. These buildings were formerly subsidized under the New York State Mitchell-Lama program but in 2005 were deregulated and sold to Cammeby's International for $295 million, about $74,000/unit. Two years later, the buildings were sold again to Putnam Holding Company, a partnership of the City Investment Fund and Urban American Management, for $918 million, about $232,000/unit. This is the portfolio where the practice of predatory equity was first identified, and tenants have been experiencing the impact of overleveraging for years. When the building left Mitchell-Lama in the mid-2000s, nearly all of the tenants had enhanced vouchers, but now the tenants with enhanced vouchers who remain in the developments are down to 40% occupancy from approximately 80% occupancy when the building first left the program. This indicates the vulnerable nature of enhanced voucher tenants who should be able to experience more long-term protection. We have recommended that the owners try to strike a preservation deal through using a combination of Article XI agreements and project-basing vouchers to protect this valuable affordable housing resource in Central and East Harlem.

Atlantic Plaza Towers: Atlantic Plaza Towers is a 755 unit Mitchell-Lama that would go into rent-stabilization when the contract expires in 2018. HPD has proposed an Article XI conversion for a thirty year regulatory agreement that protects affordability, including income targeting for those earning higher salaries in the neighborhood, as well as tenant protections including no vacancy deregulation, guaranteed lease renewal, and rents set at rates according to the city's Rent Guidelines Board. The tenants and local councilmember are in negotiations with the owner to determine if Article XI is the right preservation deal for them because there is sentiment among some tenants that the protections being offered to them are not strong enough for the benefits Article XI provides the owner.

These case studies show that HPD has experience with using Article XI as a preservation tool, but that the resources need to be directed towards other portfolios, such as the Putnam portfolio, and that when it is used, it needs to be a stronger tool that includes greater affordability and tenant protections. With the addition of project-basing vouchers as a strategy, Article XI would not be the only tool for affordability preservation, and there would be an opportunity for the two tools to enhance each other for deeper and longer term affordability.

Opportunities to Recapture

Below is a list of proposed developments to recapture through a combination of Article XI conversions and project-basing vouchers. The buildings were selected through a building analysis of former Mitchell-Lama developments that did not go into rent-stabilization, are supervised by HPD and have enhanced vouchers.

Building Name	Unit Count	Year Out	Borough	Councilmember
Stevenson Towers	121	2006	Bronx	Councilmember Annabel Palma
Boulevard Towers II	355	2005	Bronx	Councilmember Annabel Palma
University Riverview	225	2005	Bronx	Councilmember Vanessa Gibson
Heywood Broun Towers	188	2004	Manhattan	Councilmember Helen Rosenthal
North Waterside Redevelopment	370	2001	Manhattan	Councilmember Daniel Garodnick
Independence Plaza	1332	2004	Manhattan	Councilmember Margaret Chin
Knickerbocker Plaza	578	2008	Manhattan	Councilmember Ben Kallos
Glenn Gardens	266	2003	Manhattan	Councilmember Helen Rosenthal
Hudsonview Terrace	395	2004	Manhattan	Councilmember Corey Johnson
Riverside Park Community	1193	2005	Manhattan	Councilmember Mark Levine

Summary & Conclusion

- The affordable housing crisis in New York City is severe.
- Mitchell-Lama housing has been an essential affordable housing resource in New York.
- In the height of the Mitchell-Lama housing crisis in the mid-2000s, the city lost thousands of units of this vital housing resource due to buy-outs.
- The city should prioritize re-capturing those lost units and protecting current Mitchell-Lama tenants.
- Article XI has been used and should be continually used strategically as a city-based tool for affordable housing preservation.
- In instances where a building is receiving enhanced vouchers, there can be the additional preservation strategy of project-basing vouchers for tenants who have individual protections, but lack affordability protections for the units long-term.
- With the new administration and an ambitious affordable housing goal, it is possible for the administration to use Article XI as a tool to recapture units by working with City Councilmembers in particular districts where Mitchell-Lama developments have been lost.
- We will not be able to build our way out of NYC's affordability crisis without new approaches.
- A strategic combination of Article XI and project-based enhanced vouchers is an innovative tool that should be widely used as a preservation strategy.
- We suggest HPD consider the buildings on our recapture list for possible Article XI conversions. We recommend the city's housing agency work more closely with the federal government to add more project-based vouchers and to use a portion of those vouchers in buildings that have exited the Mitchell-Lama program.
- Tenants & Neighbors would like individual City Councilmembers to work closely with building owners and HPD to set the terms of each building's regulatory agreement and for Article XIs to include appropriate adjusted income requirements based on financial data for the building's neighborhood. We would like these agreements to include strong tenant protections that include mandatory lease renewals, prevent no-cause evictions, as well as provisions allowing tenants the right to organize and no vacancy decontrol.