



**AFFORDABLE FOR WHO?
THE USES AND MISUSES OF NEW
YORK CITY'S ARTICLE XI TAX
ABATEMENT**

About Tenants and Neighbors: 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.

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Introduction

New York City is in the middle of a severe affordable housing crisis that is rapidly increasing displacement, gentrification, and homelessness for its most vulnerable citizens. In the last 20 years, New Yorkers' wages have increased at a rate of under 15%, while average monthly rent for an apartment in New York City has increased by almost 40%.[1] As a result, New York City's rate of homelessness has surged to levels not seen since the Great Depression, with 63,495 people sleeping in New York City shelters each night as of December 2017. This population includes 15,586 homeless families with 23,655 homeless children. [2]

The primary cause of homelessness, especially among families, is the lack of affordable housing. [3] In response to this crisis, Mayor Bill de Blasio has pledged to create or preserve 300,000 units of affordable housing. A major component of this plan involves awarding tax abatements to for-profit real estate development companies in order to preserve affordable units through the Article XI Tax Abatement Program.

There are two main problems with the Mayor's market-based solution. The first is that his affordable housing plan in its current form does not provide relief for low-income tenants. As a result, his solution to the affordable housing crisis is to build or preserve units that are unaffordable to low-income tenants, thereby exacerbating the affordability crisis. By rushing to meet the goal of preserving or creating 300,000 units of affordable housing, the Mayor's office is giving away considerable tax dollars to for-profit developers and is getting very little in return. The second issue with City Hall's affordable housing plan is that many of the real estate developers receiving these tax abatements have histories of mistreating tenants by manipulating services like heat and hot water, overcharging rent-regulated tenants, and performing shoddy repair work around their buildings in an effort to displace long-term tenants and charge market-rate rents for their units upon turnover.

In this report, we analyze six buildings under Article XI regulatory agreements that demonstrate how the Mayor's affordable housing plan gives away money to unscrupulous landlords while failing to provide affordability for New York City's most vulnerable residents. In order to address these problems and make a meaningful contribution to the affordable housing stock in New York City, it is imperative that the de Blasio administration preserves more affordable units for very low and extremely low income New Yorkers, increases tenant involvement in the negotiation of Article XI Agreements, stops giving tax abatements to for-profit developers with unscrupulous track records, and improves regulatory oversight to make sure tenants are not displaced by underhanded landlord harassment tactics.

Not Addressing Real Affordability

The Article XI tax exemption was created in 1966 as part of the New York State Private Housing Finance Law. Its original intention was to help reduce operating costs for non-profit developers of affordable housing by easing their tax burden, but now under the de Blasio administration it is being used as the primary affordable housing preservation tool, increasingly for for-profit developers. The exemption is granted to Housing Development Fund Companies (HDFCs) and must be approved by the City Council for a particular project. The de Blasio administration uses Article XI agreements as a flexible tool by which the city can extend or create regulatory agreements in expiring regulatory programs, and it has been used in the Mitchell-Lama and HUD Project-Based Section 8 programs to create an additional layer of a regulatory agreement for rent-regulated developments. The Article XI regulatory agreements often replace an expiring Mitchell-Lama regulatory agreement, while for Project-Based Section 8 and rent-regulated housing, the regulatory agreements are often on top of the existing contract and rent-regulations.

Unfortunately, the Article XI deals being struck by the Department of Housing, Preservation and Development (HPD) in pursuit of the Mayor's goal of preserving and developing 300,000 units are inadequate in terms of addressing real affordability for New Yorkers with lower incomes in rent-regulated and expiring Mitchell-Lama developments. In the case of project-based Section 8 developments, the city is adding tax abatements on top of an already existent subsidy that keeps the housing affordable for low-income tenants, unnecessarily giving away tax dollars to often unscrupulous landlords. Many of the "affordable" units preserved or built by the Mayor's housing plan are for people of moderate or middle income. According to the Real Affordability for All Coalition, "nearly as many apartments have been built for households making over \$85,900 (100% of the median income for a 3-person household) as households that make \$25,000 (30% of AMI for a 3-person household) a year or less." [4] In addition to this issue, the affordability levels in many of these agreements are higher than the median income levels in most communities and do not serve the needs of people already living there. Because these affordability levels are applied to new tenants, landlords are indirectly incentivized to create vacancies in order to rent to a higher income population in the rent-regulated and former Mitchell-Lama developments with Article XI tax abatements, many of which went into rent-regulation after the Mitchell-Lama regulatory agreement expired. As a result, long-standing members of New York communities are at risk of being displaced and essential resources are not being strategically used for the most benefit. Many of the buildings covered by the Article XI program are in communities that are already gentrifying, and this new affordable housing resource is out of reach to those displaced community members. Continuing

this policy without thoughtful targeting of those New Yorkers in the lowest income brackets will cause even more displacement, gentrification, and homelessness.

According to the Housing New York dataset, there are currently 175 different projects with Article XI agreements. [5] This subset of properties comprises tens of thousands of low to middle income tenants in New York City. If the current manner in which Article XI agreements are formulated is not altered, tenants in rent-regulated buildings will continue to feel the harmful effects of rising rents, gentrification, and displacement. Moreover, landlords with noted histories of egregious tenant mistreatment will continue lining their pockets while the city loses money that is crucial to providing vital services. The current city administration must ask itself whether chasing its own self-defined statistic of 300,000 “affordable units” is more important than meaningfully targeting city resources toward the enormous need for affordable housing or working with mission-driven non-profit housing developers. In the following report, we examine cases across various types of affordable housing to illustrate how the current negotiation of Article XI agreements is negatively affecting tenants across the city. Across boroughs and across housing types, tenants are getting the short end of a deal in which they have no involvement in negotiations. Thousands of tenants are living in developments receiving Article XI tax abatements, and we are advocating for reforms to the program to protect those tenants and redirect the administration’s affordable housing strategy.

Case Studies

At Promenade Apartments, a former Mitchell-Lama complex in the Marble Hill section of the Bronx comprised of 317 units that went into rent-regulation, the city struck an Article XI agreement with a partnership of Nelson Management and L+M Development Partners to maintain the building’s affordability. Based on data from the city, 95 of the units were preserved for low-income households, while the remaining 222 are preserved as middle-income units. [6] “Low-income” in this case refers to people between 51 and 80 percent of New York City AMI (Area Median Income) for a family of three, meaning the household earns between \$42,951 and \$68,720 per year at those respective AMI percentages. “Middle-income” refers to people between 121 and 165 percent of New York City AMI for a family of three, which means the household earns between \$103,081 and \$141,735 per year. Total household median income for the neighborhood of Marble Hill, however, is just \$28,015, which is 32.6% of New York City’s AMI, while family household median income in Marble Hill is \$33,925, which is 39.5% of AMI. Put in practical terms, the affordability levels achieved by the city’s Article XI agreement for Promenade Apartments are woefully inadequate in terms of addressing affordability for Marble Hill residents.

In another Article XI deal for a 718-unit former Mitchell-Lama building in Brownsville, Brooklyn, that also went into rent-regulation, HPD preserved 716 “moderate income” units. The other two units in the building are classified as “other,” which means one is a superintendent’s unit and the other is beyond 165% of the New York City AMI, greater than an income of \$141,735 per year for a family of three. “Moderate-income” is classified as 81 to 120 percent of area median income, which ranges from \$68,721 to \$103,080 per year in income for a three-person family. Family household median income in Brownsville is \$46,583 per year, which comprises 47.2% of area median income for New York City. Once again, the levels of affordability preserved by the city are for people in much higher income brackets than the majority of the residents of the neighborhood, accelerating gentrification.

Regardless of the borough, the lack of effective income targeting in Article XI agreements formulated by the current administration is constant. In East Harlem, total household median income is \$31,105 and family household median income is \$31,515, which comprise 36.2 and 36.7% of New York City AMI, respectively. The Article XI agreement between the city and A&E Real Estate Holdings at the rent-stabilized Riverton Square apartment complex only preserves affordability for 975 of the 1,230 units in the entire complex. The 975 regulated units covered by the agreement are split into three equal-sized tiers of income eligibility. The first 325 designated affordable units can be rented to tenants with a maximum income of 60% of NYC AMI (\$51,540 for a family of three), the second 325 designated affordable units can be rented to tenants with a maximum income of 80% of NYC AMI (\$68,720 for a family of three), and the last 325 designated affordable units can be rented to people earning up to 125% of NYC AMI (\$107,375 for a family of three). The remaining 255 units not covered by the agreement can be rented at market rates once they are vacated by rent-stabilized tenants. Even at the lowest tier of affordability, the maximum income threshold for renting an apartment in the Riverton Square complex is almost twice the median income for a family of three living in East Harlem. These income levels price out a vast majority of East Harlem residents and again do not reach a level of affordability that would help current residents remain in the neighborhood. To make matters worse, the city is providing A&E Real Estate Holdings property tax breaks and other incentives worth up to \$100 million. [7]

Building	Neighborhood; Family Household Median Income	100% of NYC AMI for 3 people	Low Income Units (51% - 80% of NYC AMI = \$42,951 - \$68,720 per year)	Moderate Income Units (81% - 120% of NYC AMI = \$68,721 - \$103,080 per year)	Middle Income Units (121% - 165% of NYC AMI = \$103,081 and \$141,735 per year)
Promenade Apartments	Marble Hill; \$33,925	\$85,900	95	0	222
Atlantic Plaza	Brownsville; \$46,583	\$85,900	0	716	0
Riverton Square	Harlem; \$31,515	\$85,900	650	0	325

Rewarding Unscrupulous Landlords

Another problem with Mayor de Blasio's "Housing New York" plan is that when it achieves affordability, it also bequeaths lavish tax benefits to some of the city's most egregious property owners while tenants receive very little in return in terms of protections and additional affordability. Moreover, the city cannot afford to forego vital tax revenue given the current federal budget environment. HUD Project-Based Section 8 buildings with Article XI regulatory agreements are an excellent example of this problem. Tenants in these HUD-assisted buildings pay 30% of their income on rent, and HUD compensates the property owners for the remaining rent owed in the apartments. The Article XI tax abatement program runs concurrent with this subsidy, and many of the owners of these properties also receive the Low Income Housing Tax Credit, which provides a dollar-to-dollar reduction in federal income tax liability for investors in rental housing that serves very low and low-income households. These layers of subsidies make the costs of acquiring and maintaining affordable housing minimal for developers. Developers then take the surfeit of money they are given and

use it to buy up more of the affordable housing stock and continue harassing tenants. Given the histories of the property owners receiving these benefits, tax abatement programs running concurrently with federal subsidies should provide stronger protections for tenants and give them an expanded presence in negotiations when these deals are being constructed.

At the rent-regulated Savoy Park apartment complex in Central Harlem, tenants have been subjected to landlords with noted histories of manipulative tactics. Current owners Fairstead Capital, who bought the building in 2016, were sued in the same year by tenants in another rent-stabilized building in Harlem for illegally raising rents despite receiving a J-51 tax abatement.[8] In addition, former owners L+M Development Partners used other tactics to raise rents and turn a profit. This included making pricey renovations and tacking them onto tenants' rents, a practice from which rent stabilized tenants are not protected under Article XI regulatory agreements. Since 2012, when a 40 year affordability agreement was entered into under former Mayor Michael Bloomberg, 294 units had been "renovated at an average cost of \$38,278 a unit, generating a monthly rental increases of \$750 per apartment, according to the offering memo." [9] The offering memo also indicated that "800 of the units are ripe for pricey renovations, allowing ownership to increase monthly average rents by \$912, for a future gross potential rent increase of \$9 million annually." [10] After receiving millions of dollars of tax breaks, the landlords have openly stated that their business model is to push out long term tenants. In addition to these strikingly transparent objectives, L+M Development Partners also have a history of overcharging tenants. In 2014, tenants sued the company for a refund of what they claimed was \$700,000 in rent overcharges over nearly five years.[11] For all of this, the owners of Savoy Park receive "about \$2.4 million each year in real estate taxes through a New York City tax abatement." [12] Deputy Mayor for Housing and Economic Development Alicia Glen has worked with L+M Development Partners since her time at Goldman Sachs and has awarded them a number of contracts in affordable housing since she took this position in the Mayor's administration. Poor treatment of tenants and tactics of displacement take many forms, and taxpayers should not be remunerating the culprits.

The owner of the rent-stabilized Riverton Square development mentioned earlier also has a particularly egregious history of tenant mistreatment. A&E Real Estate Holdings owner Douglas Eisenberg worked at Urban American until 2011, "which has clashed with tenants in the past and racked up a number of building violations."

Additionally in 2016, "dozens of current and former tenants in 22 buildings owned by A&E Real Estate Holdings filed a lawsuit against the landlord...claiming it 'blatantly' violated rent-regulation laws...[and] regularly misrepresented the costs of improvements to apartments, which allowed the company to raise rents, remove rent-stabilized apartments from the rolls and charge market-rate rents." [13] This type of treatment and unscrupulous tactics are common among landlords in New York City

and deserve to be punished rather than rewarded. Unfortunately, the Mayor's Housing Plan is only enriching them.

One of the city's most nefarious landlords, Tahl-Propp Equities, owns affordable housing developments all over Harlem. Two HUD Project-Based Section 8 buildings in their portfolio, Audubon Apartments on Adam Clayton Powell Jr. Boulevard and Riverview I & II on West 135th Street, recently came under Article XI agreements with the city. Despite receiving vast amounts of subsidies and tax breaks from various levels of government, Tahl-Propp treats its tenants as second-class citizens. Tenant advocates across Harlem have "accused the company of engaging in 'predatory' behavior towards residents, including buying up huge building portfolios and pushing out tenants to either raise rents to market-rate or convert buildings into condos." [14] Tahl-Propp has also "faced dozens of complaints from tenants at 1890 Adam Clayton Powell Jr. Blvd. in recent months. (The tenants) claim they are being harassed through repeated loss of heat and hot water, among other problems." [15] The levels of affordability for extremely low and very low income New Yorkers are adequately preserved in buildings with HUD Project-Based Section 8 contracts (tenants currently pay 30% of their income in rent). In their current form, Article XI agreements are utilized in HUD Project-Based Section 8 developments in order to sweeten the pot for developers to extend the HUD contracts of Project-Based Section 8 buildings they own and maintain their affordability for extremely low-income tenants. However, since it is not clear why Article XI tax abatements are necessary to extend the affordability of the federally subsidized HUD contract, Article XI agreements become a give-away to wealthy corporations. With the money they save through the tax abatement, corporate developers buy up more affordable housing stock and subject more low-income and working class tenants to the same demeaning treatment mentioned above through disinvestment in their properties. Given Tahl-Propp's history of tenant mistreatment and predatory equity, it is dubious they will not engage in the same tactics again.

Across affordable housing types, New York City tenants with Article XI regulatory agreements suffer from harassment and mistreatment. In HUD Project-Based Section 8 buildings, owners use the tax abatement to buy up more of New York City's affordable housing stock while neglecting repairs and refusing to provide legally mandated services such as heat and hot water. Meanwhile, the unrealistic affordability levels in rent-stabilized buildings with Article XI agreements inadvertently encourage landlords to displace tenants because they can then rent the newly vacant unit to a tenant with a higher income. These practices are well-documented, and tenants require better oversight and enforcement mechanisms from government agencies and their elected representatives.

Policy Recommendations

There are three main areas where reforms could make Article XI tax abatements better for tenants and truly useful for preserving real and deep affordable housing with increased tenant protections.

1. First, the income targeting in exchange for tax abatements is often much higher than the average income of the tenants in both the developments where they are being placed and the neighborhoods where they are located.
 - a. Article XI agreements have had a range of income targeting, including affordability levels up to 165% AMI, which is not an affordable level for most tenants in the neighborhoods where these buildings are situated.
 - b. There needs to be greater restrictions on the affordability of Article XI agreements to ensure that resources are matching the need in local communities.
 - c. Article XI agreements use taxpayer dollars to provide additional financial incentives to building owners who are most likely already receiving other tax incentives or tax breaks for maintaining some level of affordability. This usually does not go far enough to provide the level of assistance low income New Yorkers need to afford their housing costs.
2. Second, Article XI conversions are happening without a plan for tenant engagement and there must be mandatory public engagement and information for tenants to understand their new subsidy program and their rights under the new regulatory framework.
 - a. When buildings convert to Article XI agreements, there is currently no required meeting with the owner, HPD, the local City Councilmember, and the tenants to outline the terms of the agreements, the tenant protections, and provide a space for tenants to offer feedback on the agreement.
 - b. Although the local City Councilmember does approve the final negotiated agreement, but in addition, we recommend that the Article XI agreement process include a procedure for tenant engagement and feedback.
3. Third, as HPD continues to champion Article XI as a new affordable housing program under their sole authority, clear oversight mechanisms for creating stronger regulatory agreements and tenant participation in the future of their developments must be implemented.
 - a. Even though a significant number of building owners are now receiving tax abatements from the city in the form of Article XI agreements, there is minimal public information available or accessible about Article XI and the components of these complex agreements.
 - b. There is also no one for tenants to reach out to at HPD if there is an issue that needs to be addressed. The agency needs to exercise greater oversight of the protected units in Article XI agreements.

c. We recommend that there be rules and regulations put in place about the rights of tenants to organize, tenant recourse for poor conditions, and additional mechanisms put in place similar to other affordable housing programs used at the same scale that Article XI is beginning to be in New York.

If not reformed, Article XI tax abatements will continue to be giveaways to for-profit housing developers, rather than a real affordability program targeted at increasing the amount of affordable housing accessible to low-income New Yorkers.

Conclusion

By solely focusing on the quantity of affordable housing preserved and created to reach its goal of 300,000 units, the Mayor's office is not preserving real affordability; rather, he is rewarding bad landlords for harassing tenants. The result is inefficient use of government funds that does not address the housing affordability crisis and does not viably protect tenants' rights to dignified treatment. In the near future, failure to rectify this policy will result in the erosion of vibrant racially and economically diverse communities that make up a vital part of our city. Even more dangerous is the specter of the health, educational, and employment consequences for low-income New Yorkers that result from displacement and homelessness. As sociologist Matthew Desmond points out, "evicted families lose not only their homes but their jobs, possessions and neighbors too; they relocate to substandard housing in distressed communities; they have higher rates of depression and suicide. Even if poor families avoid eviction, they still suffer, because so much of their money goes to housing costs, forcing them to buy fewer school supplies, clothes, books – and food." [15]. These potential outcomes are unacceptable. Inaction and the continuation of Mayor de Blasio's housing policy in its current form will have far-reaching and overwhelmingly negative impacts on future generations of New Yorkers. The time for reform is now.

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