

MITCHELL-LAMA CONVERSION PROTECTION BILL

Intro. No. 523

By Council Members Miller,
Gerson, Quinn and Brewer

A Local Law

To amend the administrative code of the city of New York, in relation to the withdrawal of city-supervised mitchell-lama developments from the mitchell-lama program.

Be it enacted by the Council as follows:

1 **Section 1. Legislative Intent and Findings.** The Council of the City of New York
2 hereby finds that a serious public emergency exists with respect to an acute shortage of
3 affordable housing units, that such shortage creates a serious threat to the public
4 health, safety and general welfare and that preventive action by the Council is
5 necessary to prevent exactions of unjust, unreasonable and oppressive rents and to
6 protect the health, safety and welfare of the people of the City. It is the stated policy of
7 this Council and the Mayor to create a substantial number of new affordable housing
8 units in the upcoming years. While the creation of new Affordable Housing units is
9 desirable and necessary and continues to be the stated policy of this Council, it is
10 equally desirable to preserve existing Affordable Housing units as Affordable Housing
11 for as long as possible. As a part of the City's long-standing commitment and actions to
12 create new Affordable Housing units, since the 1960's the City has sponsored the
13 creation of 139 low and moderate-income rental and limited-equity cooperative
14 developments in the City, containing approximately 56,000 units of low and moderate-
15 income housing, which were developed by Limited Profit Housing Companies under the
16 Mitchell-Lama Program. All of the City Mitchell-Lama developments have been built with
17 substantial City assistance, including the investment of hundreds of millions dollars in
18 land, forsaken tax revenues and loans at below-market interest rates. The Affordable
19 Housing units created by the City Mitchell-Lama developments have contributed
20 significantly to the revitalization and economic viability of the City, enabling hundreds of
21 thousands of City residents at all income levels to remain in decent housing in the City;
22 such Developments have also increased the number of neighborhoods in the City which
23 have a significant percentage of persons of different races, ethnicities and incomes. All
24 of the City mitchell-lama developments have reached, or will soon reach, the statutorily
25 prescribed point at which they can undergo the Conversion process and be removed
26 from the Mitchell-Lama Program. Following the Conversion process, City mitchell-lama
27 developments will be able to charge market rates for many of the housing units,
28 unrestricted by the Rent Stabilization, Rent Control or any other statutory rent

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1 regulation. The expected rental increase in City mitchell-lama development units that
2 will occur after the Conversion process will mean that many or most residents who
3 currently live in City mitchell-lama development units will not be able to afford their
4 apartments without substantial, continuing subsidies from one or more government
5 programs. One of the undesirable effects of a number of City mitchell-lama
6 developments completing the Conversion process will be to substantially exacerbate the
7 already-drastic shortage of Affordable Housing in the City. It is imperative that, before
8 any more City mitchell-lama developments complete the Conversion process, the in-
9 depth effects and impacts of each Conversion process on the residents be studied, and
10 that appropriate steps be taken to mitigate the impacts of the elimination of such
11 Affordable Housing units so as to enable the residents to remain in their homes at
12 affordable rents. It is the statutory right and obligation of the City, through the
13 Supervising agency, to: (i) ensure proper management and maintenance of existing City
14 mitchell-lama developments; (ii) investigate any serious reports of mismanagement and
15 poor physical maintenance at City mitchell-lama developments and; (iii) take
16 appropriate actions to rectify any such situation, including impose civil penalties. It is
17 the obligation of owners of City mitchell-lama developments to operate their properties
18 in compliance with all existing laws and regulations, including those specifically targeted
19 to such Developments, as a condition of receiving the substantial benefits offered to
20 such Developments under the Mitchell-Lama Program. Because there are instances in
21 which a sale of a limited profit housing company to a third party is the first step in the
22 Conversion process, third party purchasers of limited profit housing companies should
23 be aware that the limited profit housing company must demonstrate that the City
24 mitchell-lama development has been in substantial compliance with the essential City
25 Regulations for the entire period prior to dissolution. Included in the existing City
26 Regulations, at 28 RCNY § 3-14(i), are detailed procedures that the limited profit
27 housing company owners of City mitchell-lama developments must follow before the
28 Supervising agency will issue a "Letter of No Objection" to the New York State
29 Secretary of State to enable a certain limited profit housing company to dissolve and
30 enable the city mitchell-lama development to complete the Conversion process.

31
32 **§2. Title 26 of the administrative code of the city of New York is amended**
33 **by adding a new chapter 9 to read as follows:**
34

35 **Chapter 9**

36 **Withdrawals from the Mitchell-Lama Program**

37 **§26-801 Definitions**

38 **§26-802 Mitchell-Lama Conversion Plans**

39 **§26-803 Comprehensive Conversion Settlements**

40 **§26-804. Compliance investigation**
41

42 **§26-801 Definitions.** For the purposes of this section, the following definitions shall
43 apply:

44 a. "Affordable housing" shall mean housing which does not cost the tenants of a
45 dwelling unit more than thirty percent of their annual gross household income;

- b. "Building service worker" shall mean a worker who performs work in connection with the care or maintenance of a building and includes, but is not limited to, work performed by a watchman, guard, doorman, concierge, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, exterminator, elevator operator and starter, window cleaner, and superintendent;
- c. "City" shall mean the city of New York or any agency, board, commission, officer, corporation or institution the expenses of which are paid in whole or in part from the city treasury or any of whose members are appointed by the mayor or serve as a result of holding another position to which they were appointed by the mayor;
- d. "City assistance" shall mean the financial and other assistance which has been provided by the city to a city-supervised mitchell-lama development pursuant to article II of the private housing finance law including, but not limited to, the conveyance of land for less than fair market value, tax abatements, tax exemptions and low-interest loans;
- e. "City-supervised mitchell-lama development" shall mean a rental housing development which received or is receiving city assistance, whose construction was completed after January 1, 1974, which is owned by a limited-profit housing company organized under article II of the private housing finance law and is subject to the supervision of the supervising agency;
- f. "City mitchell-lama rules" shall mean those rules promulgated by the supervising agency for the supervision of a city-supervised mitchell-lama development pursuant to article II of the private housing finance law.
- g. "Comprehensive conversion settlement" shall mean an agreement between the limited profit housing company that owns a city-supervised mitchell-lama development and the tenants of such development which is approved by the supervising agency, the tenants' representative and tenants representing at least fifty-one percent of the dwelling units in the city-supervised mitchell-lama development;
- h. "Conversion process" shall mean the process of dissolving a limited profit housing company and withdrawing a city-supervised mitchell-lama development owned by such limited profit housing company from the mitchell-lama program pursuant to subdivision two of section thirty-five of the private housing finance law;
- i. "Dwelling unit" shall mean a legally occupied dwelling unit in a city-supervised mitchell-lama development.
- j. "Like-kind units" shall mean housing units of the same approximate cost, size and quality as those removed from the mitchell-lama program through the conversion process;
- k. "Limited-profit housing company" or "owner" shall mean a company organized pursuant to article II of the private housing finance law for the purposes of developing and owning a housing development under the mitchell-lama program;
- l. "Mitchell-lama program" shall mean the program created by article II of the private housing finance law;
- m. "Supervising agency" shall mean the department of housing preservation and development;
- n. "Tenant" shall mean a resident of a city-supervised mitchell-lama development, who is eighteen years of age or older, and who lives in a dwelling unit pursuant to a lease recognized by the supervising agency; and

o. "Tenants' representative" shall mean a duly constituted tenants' association for a city-supervised mitchell-lama development, or in the event that a tenants' association has not been formed, such other entity or group that the supervising agency determines shall appropriately represent the interests of the tenants of such city-supervised mitchell-lama development;

§26-802 Mitchell-lama conversion notice.

a. The owner of a city-supervised mitchell-lama development who seeks to undergo the conversion process shall be required to give no less than eighteen months written notice of such intention to the supervising agency and to each tenant of such development.

b. In accordance with the provisions of subdivision two of section thirty-five of the private housing finance law, an administrative fee shall be imposed upon the owner of a city-supervised mitchell-lama development who submits a notice of intent to undergo the conversion process to be used by the supervising agency to offset the costs incurred by the supervising agency in effectuating the conversion, including the preparation by the supervising agency of a mitchell-lama community impact study as required by subdivision c of this section and described in subdivision d of this section. Such administrative fee shall be paid to the supervising agency and shall be in the amount of one thousand dollars for each dwelling unit proposed to be converted pursuant to such notice. One-half of such administrative fee shall be paid at the time the owner of such development issues a notice of intent to undergo the conversion process, or in the event that the effective date of this subdivision is subsequent to the submission of such notice of intent, as soon thereafter as shall be determined by the supervising agency in its reasonable discretion. The remaining portion of the administrative fee shall be paid at the time the supervising agency certifies a final mitchell-lama community impact study as required by subdivision g of this section.

c. The supervising agency shall be required to prepare a mitchell-lama community impact study for each city-supervised mitchell-lama development for which a notice of intent to undergo the conversion process is submitted. No less than ninety days after a notice of intent has been submitted to the supervising agency, or in the event that the effective date of this subdivision is subsequent to the submission of the notice of intent, as soon thereafter as shall be determined by the supervising agency in its reasonable discretion, the supervising agency shall initiate preparation of a draft mitchell-lama community impact study which examines the effects and impacts on the tenants of the city-supervised mitchell-lama development for which the notice of intent was submitted. Such draft mitchell-lama community impact study shall be completed no later than two hundred seventy days after such notice of intent was submitted. However, where both the owner of such city-supervised mitchell-lama development and the tenants' representative jointly inform the supervising agency that the parties are making substantial progress to negotiate a comprehensive conversion settlement, the supervising agency may defer initiating preparation of a draft mitchell-lama community impact study for a period of up to ninety days. During that period, if either party informs the supervising agency that substantial progress has not been achieved, the supervising agency shall immediately thereafter initiate preparation of the mitchell-lama community impact study. In the event a comprehensive conversion settlement is not

1 concluded during such deferral period, the supervising agency shall initiate the study.
2 The study shall be completed within two hundred seventy days from the date
3 preparation is initiated.

4 d. Each mitchell-lama community impact study shall include, at a minimum, the
5 following ;

6 (i) a brief history of the city-supervised mitchell-lama development for which
7 the notice of intent was submitted for the entire period of time from the formation of
8 the limited-profit housing company that owns the development to the submission of the
9 notice of intent to undergo the conversion process;

10 (ii) the market rents in the area surrounding such development and a
11 reasoned estimate of the rent increases likely to be imposed for dwelling units within
12 such development should the development complete the conversion process;

13 (iii) a reasoned estimate of the number of dwelling units in the city-supervised
14 mitchell-lama development that will remain as affordable housing during the twenty-
15 year period following completion of the conversion process;

16 (iv) the availability of like-kind units in the area surrounding such
17 development;

18 (v) a reasoned estimate of the number of tenants in the city-supervised
19 mitchell-lama development who will be displaced in order to find like-kind units and an
20 analysis of the demographic characteristics of those tenants including, but not limited
21 to, their income levels, familial status, race, ethnicity, age, gender, and such other
22 demographic information as the supervising agency determines to be appropriate; and

23 (vi) such other information about the potential impacts on affordable housing
24 resulting from completion of the conversion process of such development on the
25 tenants, as is determined by the supervising agency as relevant.

26 e. The mitchell-lama community impact study prepared in accordance with
27 subdivision d of this section shall include recommendations for mitigating any adverse
28 effects that are associated with the development completing the conversion process
29 and shall focus on mitigation measures to address the loss of affordable housing units,
30 both to those tenants who are displaced and to the city, and shall also calculate the
31 cost of implementing each recommendation;

32 f. Each draft community impact study shall be subject to a review procedure
33 established by the supervising agency by rule which shall incorporate, but not be limited
34 to, the following:

35 (i) a period for public comment, including comment by the applicable tenants'
36 representative;

37 (ii) review of the draft mitchell-lama community impact study by the
38 department of city planning and the community board for the community district in
39 which the city-supervised mitchell-lama development is located; and

40 (iii) at least one public hearing shall be held within the community district in
41 which the city-supervised mitchell-lama development is located to allow the department
42 of city planning, the applicable community board, the applicable tenants' representative
43 and members of the public, to comment on the draft community impact study.

44 g. After consideration of any comments received by the supervising agency and the
45 testimony at the public hearing, the supervising agency shall revise the draft mitchell-

lama community impact study, as is appropriate, and it shall thereafter be certified by the supervising agency as final;

h. After a final mitchell-lama community impact study has been certified by the supervising agency, the limited-profit housing company that owns the city-supervised mitchell-lama development for which a notice of intent to undergo the conversion process has been submitted shall either (i) implement the mitchell-lama community impact study's recommendations and mitigate the major adverse effects of the conversion process to the reasonable satisfaction of the supervising agency; or (ii) deposit into a segregated account to be established by the supervising agency an amount of money sufficient to enable the supervising agency or its designee to implement the mitchell-lama community impact study's recommendations and to mitigate the major adverse effects of the completion of the conversion process;

i. Within thirty days from the end of each fiscal year, the supervising agency shall submit to the council, the mayor and the chairperson of the city planning commission a mitchell-lama conversion report that describes all city-supervised mitchell-lama developments that have undergone, or have had initiated for them, the conversion process. Each conversion report shall also summarize the study recommendations contained in each mitchell-lama community impact study and describe generally the other actions the supervising agency has taken pursuant to this section, as well as such additional items as the supervising agency shall deem appropriate.

§26-803. Comprehensive conversion settlements.

a. Notwithstanding any other provision of this chapter, the supervising agency shall waive any requirements of this section which have not already been completed, including the payment of any portion of the administrative fee imposed pursuant to subdivision c of section 26-801 of this chapter, upon the execution of a comprehensive conversion settlement;

b. In addition to any other provisions contained in a comprehensive conversion settlement, a comprehensive conversion shall provide that (i) any dwelling unit that is occupied by a tenant at the time of a comprehensive conversion settlement shall remain as affordable housing for so long as the tenants and limited-profit housing company that owns such city-supervised mitchell-lama development shall agree but which may not be for a period of time less than the period during which any tenant who occupied a dwelling unit at the time the comprehensive conversion settlement was executed or any lawful successor to such a tenant, occupies any dwelling unit in such development; and (ii) the level of building services and maintenance performed by building service workers at such city-supervised mitchell-lama development at the time the comprehensive conversion settlement is executed shall be sustained at an equal or greater level during such period of time as shall be set forth in the comprehensive conversion agreement but which may not be shorter than the period during which any tenant who occupied a dwelling unit at the time of the comprehensive conversion settlement remains a tenant in that City-supervised mitchell-lama development.

§26-804. Compliance investigation.

a. Except where a comprehensive conversion settlement has been executed, the supervising agency may not issue a letter of no objection to the proposed dissolution of

1 the limited-profit housing company that has submitted an application to undergo the
2 conversion process, until the supervising agency has determined that the limited-profit
3 housing company has substantially complied with all of the essential requirements of
4 any contract with the city, any land disposition agreement or resolution by which the
5 city authorized the conveyance or conveyed any interest in city-owned real property to
6 the owner, the city mitchell-lama rules, any agreements relating to tax abatements, tax
7 exemptions, loans or other financial matters to which the owner and the city are
8 parties, and all applicable laws, statutes or regulations;

9 b. The limited-profit housing company shall, simultaneous with its submission of a
10 notice of intent to undergo the conversion process, or in the event that the effective
11 date of this subdivision is subsequent to the submission of such notice of intent, as
12 soon thereafter as shall be determined by the supervising agency in its reasonable
13 discretion, present clear and convincing evidence of the owner's substantial compliance
14 with the essential requirements of the obligations set forth in subdivision a of this
15 section, including, but not limited to, financial obligations, proper management of
16 tenant eligibility lists, physical maintenance of the city-supervised mitchell-lama
17 development owned by the owner, tenant safety at such development, the proper
18 setting of rents and the awarding of contracts;

19 c. The evidence submitted by the owner shall be reviewed by the supervising
20 agency and the applicable tenants' representative and shall be made available to any
21 tenant of such development. The supervising agency shall be required to hold a public
22 information meeting with respect to an application by an owner to undergo the
23 conversion process and as a part of that public information meeting, the tenants'
24 representative and any other tenant of such development shall be permitted to
25 comment on the evidence submitted by the owner to demonstrate substantial
26 compliance with the essential requirements set forth in subdivision a of this section and
27 the tenants representative and other tenants shall be permitted to submit evidence
28 either in support of or in opposition to the evidence presented by the owner, including
29 evidence as to material suffering of the tenants or adverse effects on the city as a result
30 of the owner's failure to comply with the essential requirements;

31 d. Within twenty days of the conclusion of such public information meeting, the
32 supervising agency shall make detailed findings of fact as to whether the city mitchell-
33 lama development has substantially complied with the essential requirements set forth
34 in subdivision a of this section, and if not, whether the tenants or the city have
35 materially suffered as a result of such non-compliance;

36 e. If the supervising agency determines that the owner of the city-supervised
37 mitchell-lama development has substantially complied with the essential requirements
38 set forth in subdivision a of this section or determines that neither the tenants nor the
39 city have materially suffered as a result of any failure to comply, the supervising agency
40 shall be authorized to issue a letter of no objection to the withdrawal from the mitchell-
41 lama program;

42 f. Where the supervising agency determines that the owner of the city mitchell-
43 lama development has not substantially complied with the essential requirements set
44 forth in subdivision a of this section and also determines that the tenants or the city has
45 materially suffered a result of such failure to comply, the supervising agency shall
46 require the owner to pay a civil penalty in an amount equal to three times the greater

1 of (i) the amount of damages suffered by the tenants or the city; or (ii) the amount
2 required to substantially comply with the essential requirements set forth in subdivision
3 a of this section. The supervising agency, in determining the amount of the penalty,
4 shall examine the following factors:

5 (i) the nature, gravity and duration of the harm suffered by the tenants as a
6 result of the failure to substantially comply;

7 (ii) the harm suffered by the city as a result of the failure to substantially
8 comply; and

9 (iii) the degree to which the owner benefited financially as a result of the
10 failure to substantially comply.

11
12 **§3. Title twenty-five of the administrative code of the city of New York is**
13 **amended by adding a new section 25-114 to read as follows:**

14
15 **§25-114** Review of mitchell-lama community impact studies. The department of
16 city planning shall review any mitchell-lama community impact study prepared pursuant
17 to the provisions of section 26-802 of this code.

18
19 **§4.** If any clause, sentence, paragraph, section or part of this local law shall be
20 adjudged by any court of competent jurisdiction to be invalid, such judgment shall not
21 affect, impair or invalidate the remainder thereof, but shall be confined in its operation
22 to the clause, sentence, paragraph, section or part thereof directly involved in the
23 controversy in which judgment shall have been rendered.

24
25 **§5.** This local law shall take effect thirty days after its enactment into law and the
26 requirements set forth herein shall be applicable to all city-supervised mitchell-lama
27 development which have not already completed the conversion process as of the
28 nineteenth day of August, 2003. The commissioner of housing preservation and
29 development shall take all actions as are necessary for its implementation prior to such
30 effective date.