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2

Should the next mayor require developers to permanently maintain the affordability of units developed or rehabilitated with public subsidies?

The city, state, and federal governments help address the shortage of affordable housing by subsidizing the development, rehabilitation, and operation of affordable units. Currently, developers who use these subsidies must ensure the affordability of new and rehabilitated units for only a set period of time, and after this period, developers can "opt out" of the affordability.

WHY IT MATTERS (CONT'D)

Several candidates for mayor have proposed changes to these subsidy programs that would require developers to make the units permanently affordable as part of the initial agreement, or grant the city the unilateral right to pay for an extension when the first period expires. These changes would prevent developers from opting out and charging market rents. However, requiring permanent affordability or giving the city the option to extend the affordability restrictions may increase the cost of developing new affordable units, potentially commit the city to an ongoing subsidy, and have other consequences as well.

THE BASICS

There are currently more than 180,000 units of affordable rental housing in New York City owned by for-profit firms or not-for-profit organizations that were developed using one or more of the following programs: below-market mortgages or mortgage-insurance provided by the U.S. Department of Housing and Urban Development (HUD), below-market financing, land, or tax abatements from the city and state through the Mitchell-Lama program, project-based rental subsidies from HUD, federal Low Income Housing Tax Credits (LIHTC), or other subsidy programs tracked by the Furman Center's Subsidized Housing Information Project.[1] As part of each subsidy program, developers enter into contracts requiring them to maintain the affordability of the units for some period of time. For example, developers using the LIHTC program (now the most commonly used program for financing new affordable housing units), must generally keep their units affordable for at least 30 years.[2] Once that period expires, the developer can opt out of the program.

To preserve the affordability of units with expiring program contracts, the city spends millions on renewals and extensions it negotiates with property owners. In fact, the city's 2010 New Housing Marketplace Plan anticipated that the city would spend $1.4 billion over the following five years to preserve the affordability of 47,000 units. Even the city's willingness to devote substantial resources to extensions and renewals may not guarantee the affordability of the current stock of subsidized units, however, if developers decline the city's offers or if the number of units with expiring contracts outpaces the city's budget. Indeed, the city was able to renew or extend the restrictions on less than half of the approximately 62,000 units with affordability restrictions that expired between the years 2000 and 2011.

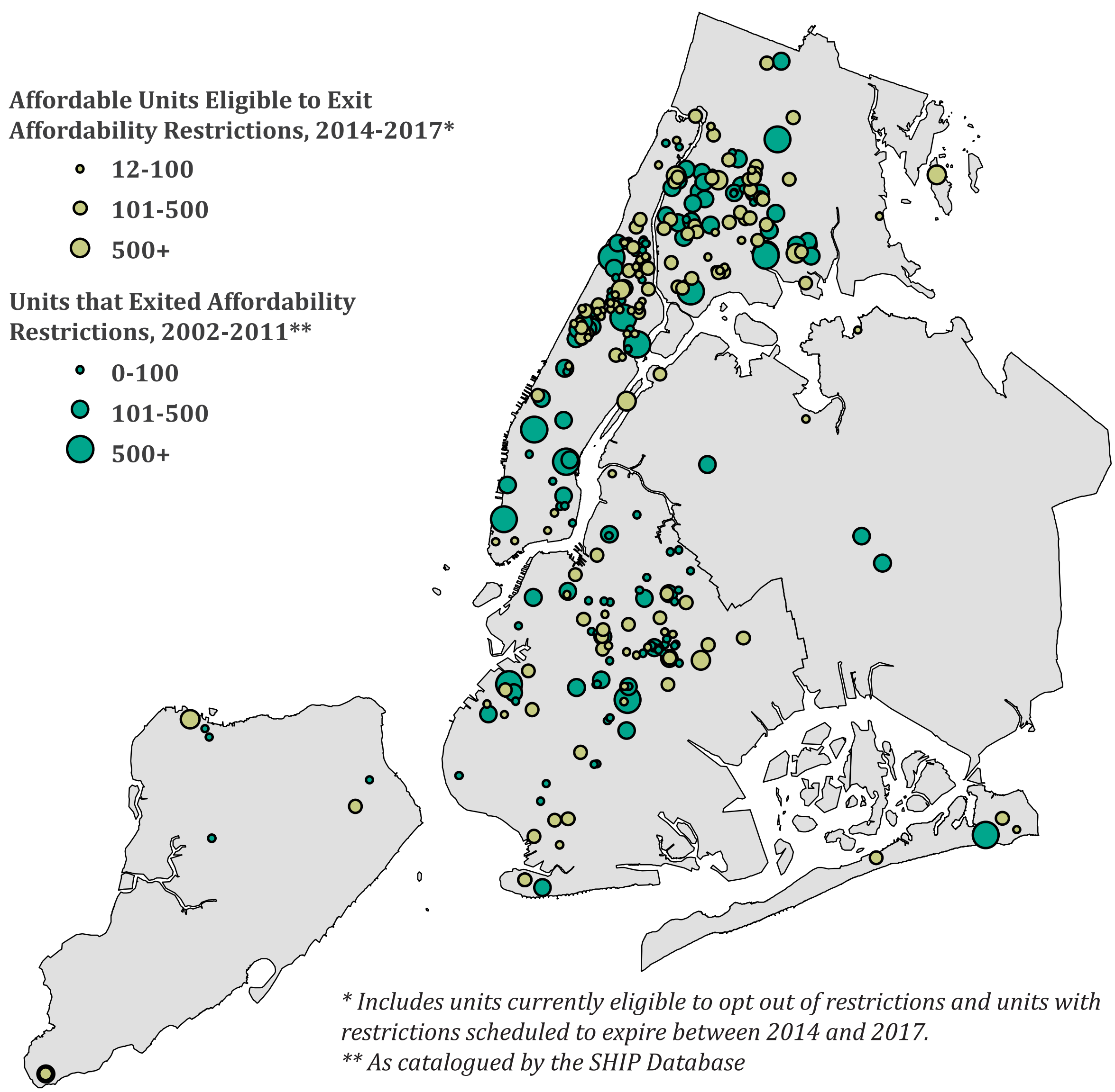
1 The Furman Center's Subsidized Housing Information Project tracks subsidized rental units developed or rehabilitated through several commonly used programs (including the four named above), but does not include units subject to affordability restrictions due to others, such as the Housing Asset Renewal Program, the Preservation Loan Program, or the Small Owner Repair Program.

2 After 15 years, the LIHTC affordability requirement may expire if the developer can show that maintaining the units as affordable is not economically viable and if there is no suitable buyer who can maintain their affordability. Projects developed with additional sources of subsidy may have affordability requirements that last longer than the initial 15 years.

Overall, more than 68,000 units originally developed under the four main subsidy programs are no longer subject to their initial rent restrictions and may no longer be affordable to low-income households.[3] Tens of thousands more have restrictions scheduled to expire during the next mayor's first term or are subject to restrictions from which the developer can already opt out at any time. Figure 1 shows the location these units.

3 These units were either subject to requirements that expired or "failed out" because the developer did not comply with program requirements. Some of these properties may have remaining affordability restrictions through programs that are not yet tracked by the Furman Center. Additionally, many properties no longer subject to program requirements remained subject to rent stabilization restrictions after their subsidy expired due to previous agreements or in exchange for tax abatements. In many formerly HUD-subsidized properties, while the rents may have increased to market rate, the tenants at the time of the opt out often received Section 8 vouchers.

FIGURE 1: Location of Units Eligible to Exit Affordability Soon and Units that Recently Left All Affordability Restrictions



** Includes units currently eligible to opt out of restrictions and units with restrictions scheduled to expire between 2014 and 2017.*
*** As catalogued by the SHIP Database*

Source: Subsidized Housing Information Project (SHIP), New York City Department of City Planning, Furman Center

QUESTIONS & CONSIDERATIONS

If the next mayoral administration were to move towards a policy of permanent affordability in HPD- and HDC-financed programs, it would potentially have significant effects on the retention, production, location, and operation of affordable housing in New York City. There are a number of questions the candidates should consider when exploring permanent affordability.

As with any public policy, the structure and terms of permanent affordability will matter. In one model, housing would be made permanently affordable up-front (when it is initially developed or rehabilitated, or when an expiring program contract is renewed or extended), and owners would not be able to opt out at any point. An alternative could be a policy that gives the city an option to unilaterally extend or renew the affordability period at the end of the initial term for a pre-determined price. The latter policy could give the city the ability to preserve units in the future for an agreed price, but also provide the city with the flexibility to decide whether to pay that price in light of the later circumstances. Candidates for mayor should be clear about which of these two models, or what alternative model, they are proposing.

Any model of permanent affordability will likely affect the number of affordable housing units preserved and constructed in New York City going forward. If affordable housing were to be made permanently affordable up-front it would lessen the attrition of affordable housing from the stock due to owners opting out of the programs, preserving the housing for future generations. This could also mean that the city could preserve the affordable housing stock without having to budget billions of dollars for future renewals or extensions. It is also possible, however, that developers, lenders, and investors may demand deeper ongoing or up-front subsidies to participate in programs if they no longer have the option to realize all or some of the “residual” value of a property whose restrictions expire in a favorable rental market. Higher development costs would mean the city could afford to subsidize fewer new affordable units in the short run.

A policy of permanent affordability could also have an effect on the neighborhoods where subsidized housing is located. Because owners of affordable housing are most likely to opt out when market rents are high or rising, a policy of permanent affordability could be particularly useful for preserving the stock of affordable units in gentrifying or highly desirable neighborhoods, providing low-income families with access to neighborhoods of higher opportunity. On the other hand, without the promise of the residual value, developing affordable housing in gentrifying or high-rent neighborhoods may become less attractive than developing in less desirable neighborhoods, shifting more affordable

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housing production to neighborhoods that offer residents lower performing schools and fewer amenities.

Finally, implementing a policy of permanent affordability does not guarantee a well-maintained stock of affordable housing in perpetuity without additional subsidy. The possibility of opting out of an affordability program or receiving a negotiated pay-off to renew can act as an incentive for owners to properly maintain affordable units during the life of the contract. If a policy aiming for permanent affordability buys out the residual value with a higher up-front payment, or sets the cost of renewing or extending the affordability period in advance, it could lead private owners to invest less in their affordable units to the detriment of their tenants. In extreme cases, private owners without the possibility of future gains from their properties may simply walk away from them in tough times, leaving the city with the burden of providing additional subsidy or assuming operations itself and making neglected capital repairs. However, there is much less reason to be worried about long-term maintenance issues or financial hardship resulting from permanent affordability in mixed-income buildings where the market-rate units provide an ongoing cross-subsidy and incentive for the owners to maintain the buildings.

Candidates who advocate for permanent affordability should be asked to make clear how they would structure the policy to limit the possible drawbacks. Specifically, would units be made permanently affordable from the beginning or would the city have an as-of-right option to pay for an extension when the current affordability period ends? How would each candidate fund the higher up-front cost (or would they reduce housing production targets to address the higher costs, and if so, by how much)? What incentives would a program offer to help ensure that private owners properly maintain and continue to operate properties? And if such a policy does lead to more failed properties, what would be the city's plan and funding contingency for ensuring that they are taken over by more responsible owners?

About the Furman Center and the Moelis Institute for Affordable Housing Policy

The Furman Center for Real Estate and Urban Policy is a joint center of the New York University School of Law and the Robert F. Wagner Graduate School of Public Service at NYU. Since its founding in 1995, the Furman Center has become a leading academic research center devoted to the public policy aspects of land use, real estate development, and housing. The Furman Center launched the Moelis Institute for Affordable Housing Policy to improve the effectiveness of affordable housing policies and programs by providing housing practitioners and policymakers with information about what is and is not working, and about promising new ideas and innovative practices.

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