Examining the Incidence of Housing Code Violations Within Mitchell-Lama Properties

Cristina Scofield

Fordham University

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Abstract:

The Mitchell-Lama housing program is one of the most prevalent affordable housing programs seen in New York City. In exchange for tax abatements, landlords agree to provide a set number of affordable housing units in their buildings for a specific time period. At the conclusion of this period of affordability restrictions, landlords and coop-owners have the option to "opt-out" of restrictions, and take their properties to market rate. Each building is different though, with some opting to either renew their Mitchell-Lama benefits or "roll-in" to other governmental subsidies, and others choosing to go market rate. It is hypothesized that as Mitchell-Lama properties near expiration, housing code violations will increase. Results of this study show that, on average, violations increase in the years surrounding the year of expiry. Additionally, results show that there is a marked difference in violation incidence in Mitchell-Lama buildings than comparable market rate, privately owned and operated apartments as well as in the violation counts seen among Mitchell-Lama rentals, Mitchell-Lama coops, and comparable market rate apartments.

Examining the Incidence of Housing Code Violations Within Mitchell-Lama Properties

In New York City, high rent burdens and skyrocketing rents have necessitated the implementation of affordable housing measures on city, state and federal levels. The Mitchell-Lama program, originally established in 1955 within the Limited Profit Housing Law, is one such program, providing developers with financial incentives to build affordable housing for a minimum period of 20 years.[1] This program is responsible for funding more housing units than any other supply-side affordable rental program.[2]

Properties can be either cooperatives (coops) or rentals, and are often funded from different sources; some Mitchell-Lama buildings receive funding from (and thus overseen by) New York State's Department of Homes and Community Renewal (HCR), while others are under the jurisdiction of New York City's Department of Housing Preservation and Development (HPD).

Buy-outs of Mitchell-Lama rental properties, or dissolutions, remove the buildings from affordability restrictions and HCR or HPD supervision. This process allows developers to charge higher rents to new tenants and reduces the stock of affordable housing.[3] The first buy-out of a Mitchell-Lama property occurred in 1984 at Ridgemont Park in Rochester, leading to rent increases of 40% and the forced displacement of tenants.[4]

In the case of Mitchell-Lama coops, a different dissolution process is required to convert the coop to market rate. Originally, ⅔ of coop residents had to vote for privatization in order for

[1] While the original statute in 1955 guaranteed a 40-year affordability period, a revision in 1956 allowed buy-outs to occur after only 20 years.
[2] Reina et al, 3.
[3] While a buy-out may exempt property owners from Mitchell-Lama supervision, buildings built prior to January 1, 1974 are still subject to rent stabilization laws.
[4] Mitchell-Lama.org

a coop to leave Mitchell-Lama restrictions (and thus waive Mitchell-Lama tax benefits). A 2021 New York State bill signed by Gov. Kathy Hochul raised this requirement to 80% of residents (although only 67% are needed to begin an inquiry into feasibility of conversion, the first step in the process of formal conversion) as part of an effort to retain the affordability of these properties. Following completed privatization via the 80% vote, residents remain owners of their unit, but must begin to pay market rate real estate taxes. Many coop owners sell their unit, often for a large profit. For example, Southbridge Towers, located in Lower Manhattan, was one such Mitchell-Lama coop that voted to privatize; residents who sold their apartments and moved out of the development saw profits in the hundreds of thousands of dollars.

Properties in New York City that receive some kind of governmental subsidy are subject to yearly inspections by HPD. In addition, tenants can report suspected violations or hazards to 311, which triggers an inspection by HPD. Regardless of the reason for an inspection, observed violations are cataloged and accessible via New York City's Open Data portal. Violations are categorized as either a Class A, B, C, or I violation, with Class C being the most serious, immediately hazardous class of violation. Class C violations cover problems with heat and hot water, rodents, peeling lead paint where young children are present, and egregiously defective plumbing or hazardous plaster. [5] While Class C violations are the focus of this study, that is not to say that Class A or B violations are inconsequential. For example, citations for missing or improperly closing self-closing doors is a Class B violation; this violation was cited as responsible for the rapid spread of smoke in the Twin Parks apartment fire in January 2022.

Current studies on the topic include Reina and Begley's 2014 study on predictions of subsidized housing opt-outs. The study focused on opt-outs specifically within the Mitchell-Lama program for its popularity. Reina and Begley found that properties are more

[5] Tenant.net

likely to opt out if they are "located in neighborhoods with high property value growth, those with for-profit owners, and those past the affordability restrictions on all subsidies." [6] In other words, any time more money can be made through a market rate property than through Mitchell-Lama incentives, owners will likely opt-out.

My hypothesis is that because of this, landlords looking to profit from their Mitchell-Lama property will be looking to opt-out near expiration; the quickest way to force out tenants who are paying affordable rents and create open spots for tenants capable of paying higher, market rate rents is to create a living environment that is near uninhabitable. Namely, by allowing regulated units to go into disrepair, building owners can force the displacement of tenants that benefit from affordability requirements. Additionally, in the case of many limited-profit building owners planning to sell their buildings to private developers around the time that Mitchell-Lama restrictions expire, there is little to no incentive to maintain buildings as they reach opt-out and sale. This was exactly the case at a Mitchell-Lama property in the Bronx, 1520 Sedgwick. In this specific instance, a long-standing Mitchell-Lama property was purchased by a private real estate speculator. In the following years, residents saw an increase in violations of "more than 600 percent." [7] As such, in this paper, I will examine whether immediately hazardous housing safety code violations increase as Mitchell-Lama properties near expiration.

Methods:

Data for this study were primarily obtained from three open data sources. Housing safety code violations were downloaded from the HPD's listing in the NYC Open Data portal found at

[6] Reina et al, p. 13
[7] A Building in Decline - The New York Times & Woes Mount at Bronx Building, 1520 Sedgwick Ave., Bought in Bubble - The New York Times

data.cityofnewyork.us.[8] The coredata.nyc database from the Furman Center at NYU provided a list of every subsidized property in New York City, including all Mitchell-Lama properties.[9] The coredata.nyc database also provided property-level information on start and end dates of subsidies, building characteristics, and tenure, all of which allowed for a more detailed dataset and final analysis. Finally, data on unsubsidized buildings were acquired through the NYC Primary Land Use Tax Lot Output (PLUTO) database, which provides land use and geographic information on every tax lot in the city.

Once downloaded, data was imported into STATA statistical software. Code violations were sorted by class, and only Class C violations were kept. This dataset of Class C code violations was merged with the dataset of subsidized properties by Boro Block Lot (BBL) identification number and inspection year. I noted the number of years prior to and post expiration as well as the number of violations in each building per year for each year.

The data was then transformed into a balanced panel, with the time variable being years_til_expiration, spanning from -10 to +10. For each building, any year that had no violations was assigned a value of 0 for bbl_violations_year_count. Then, a fixed effects regression was run, where bbl_violations_year_count was regressed on dummy variables of BBL.

In order to compare Mitchell-Lama properties to unsubsidized properties, I used the PLUTO database to obtain a random sample of comparable market rate apartment buildings. I selected for and kept only apartment buildings classified as “D3”, which are defined by New York City as an “elevator apartment, fireproof without stores,” and built during or after 1950 with more than 10 floors, which gave me exclusively residential buildings built after WWII.

[8] HPD data was downloaded on and is current as of 06/10/2022 at 11:07 AM.
[9] Subsidized Housing data was downloaded on and is current as of 05/29/2022.

Then, I merged this set of all D3 buildings with the Furman Center dataset of all subsidized buildings (regardless of specific subsidy program), and dropped all "matches." Because all "matches" were buildings that were labeled as D3 but also received some kind of subsidy, whether Mitchell-Lama or an alternative subsidy, this gave me the unsubsidized, D3 buildings in New York City. I then took a random sample of 100 of these buildings. From here, I merged this sample with the Class C violations dataset. I again created the count of violations per building, per inspection year.

In order to bridge the gap between the Mitchell-Lama dataset and the unsubsidized D3 dataset, I created a new time variable of age at inspection ("age_at_insp") by subtracting the year the building was built from the inspection year; this was applicable to all buildings regardless of subsidy status, which allowed me to compare across categories later on. I then panelized this dataset with the time variable being inspection_year (because these buildings are unsubsidized, they have no date of expiration like Mitchell-Lama properties did; thus, I was unable to panelize in the same manner). I panelized using inspection_year because that was a common variable between this D3 dataset and the subsidized dataset.

Once each individual dataset was completed, I combined them into a separate, master dataset that contained all Mitchell-Lama buildings, the random sample of D3, unsubsidized buildings, their yearly violation counts, time variables, and other biographical data.

All regressions run on these data were fixed effect panel regressions.

Results:

Mitchell-Lama v Unsubsidized (Table 1)

Over all inspection years, Mitchell-Lama properties saw 1.69 more yearly violations, on average, than unsubsidized D3 apartment buildings.

Coop v Rental Within ML (Tables 2, 3, and 4)

Data support that ML rentals have 1.15 more yearly violations, on average, than market rate rentals. Additionally, ML coops have, on average, 2.38 more yearly violations than unsubsidized apartments. Controlling for community district.

In order to account for some buildings with excessively high counts of violations, I removed buildings with more than 50 violations from consideration. In a histogram of yearly building violation counts, there are a few outlier buildings that have counts above 50, as seen in Table 4. As seen in Table 3, Mitchell-Lamas still see higher incidence of violations than unsubsidized counterparts (albeit to a lesser extent than found when all buildings were taken into account). If left unaddressed, these violations begin to pile up over time. For example, in a five-year period, ML rentals are expected to see an average of approximately 5-6 more violations than market rate rentals, and ML coops are expected to see an average of 11-12 violations than market rate rentals. In this, we can see a clear difference in building safety between Mitchell-Lama and unsubsidized, D3 apartments.

YTE Analysis Within Expired Mitchell-Lamas (Tables 5 and 6)

Within expired Mitchell-Lama properties, data suggests an average increase in violations within the years surrounding expiration (albeit to varying degrees of statistical significance, though all at least to 80% confidence). Significantly, we see average increases of 3.5 violations

in the year immediately preceding expiration, 2.5 violations in the year of expiration (yte 11), and 6.35 violations in the year immediately following expiration (yte10). While these numbers may seem small when taken separately, it is important to remember that this means a three year span of time would bring an average of 12-13 new Class C violations. Within the span of one year until expiration to 4 years after expiration, there is an average increase of 21.41 new violations. The incidence of up to 12-13 violations within the three year period around expiration is troubling. One Class C violation might mean an entire family is without heat in the middle of winter. 12 of these violations within a concentrated period of time makes a building virtually uninhabitable.

Discussion:

The data points to a serious issue within the Mitchell-Lama program. Part of the issue is seen with the fact that violation incidence is higher within the program as opposed to in the sample of unsubsidized apartment buildings. Across the board, buildings in the program are less safe than their privately-owned and operated counterparts. As such, there seems to be a need for increased efforts to hold Mitchell-Lama landlords accountable for the upkeep of their buildings. This might be in the form of more frequent inspections by HPD or in more significant financial penalties for violations than are currently in place. [10]

The other part of the issue lies within the observed uptick in violations at and around Mitchell-Lama expiration. Although the exact explanation for the uptick around expiration remains unclear, it points to an overlooked phenomenon in the behavior of building owners over the tenure of the subsidy. In future affordable housing programs, special attention should be paid

[10] Currently, observed Class C violations carry per-violation fines as well as per-day fines that are accrued until the violation is corrected. Amounts vary significantly between type of Class C violation as well as if the observed violation is the first in the building, or a repeat violation in the same building.

to potential incentive issues for building owners at or near expiration to prevent similar increases in violations from occurring.

This phenomenon also raises the question of whether the opt-out clause in the program is problematic. Does a building owner reach a point in their ownership of a Mitchell-Lama building where he or she no longer has a financial incentive to maintain the building due to the proximity of the opt-out option? Further research is needed to determine whether the presence of an opt-out date negatively impacts the safety of a building regulated by a subsidized housing program.

In future studies, I would differentiate between buildings that reached expiration and opted-out and buildings that expired and remained in the program or chose to begin a new subsidy. Additionally, I would create a more comprehensive dataset on Mitchell-Lama buildings that also included additional subsidies and their overlap (if applicable). In this study, I only accounted for the presence of an additional subsidy, without a date range or additional subsidy end date.

Finally, I treated all D3 buildings as rentals and did not differentiate between rentals and coops. I focused exclusively on subsidized properties for the majority of the research period; it was only towards the end of my time that I decided to include a comparison to unsubsidized "control." In future studies, I would like to have a better understanding of which buildings in the D3 dataset were cooperatively owned, and which were rented, and use that information to conduct a more robust comparison between Mitchell-Lama and unsubsidized properties.

Conclusion:

This study has shown a stark difference in safety of Mitchell-Lama subsidized buildings and unsubsidized counterparts, as measured by the incidence of housing code violations. In

answering my research question about the incidence of violations around expiration, I was also led to inquire about incidence of violations within the Mitchell-Lama program as a whole, compared to unsubsidized buildings. With both of these lines of inquiry producing results that imply a safety issue within the Mitchell-Lama program, it is clear that policy changes are in order. As I see it, the results of this study should encourage the implementation of new protocols within HPD housing safety code enforcement as well as inform the creation of future affordable housing programs.

The results also warrant further research into the topic. Although I focused on Class C violations to keep my study at a manageable scale, I feel that a better understanding of the incidence of Class B violations would also provide helpful insights into the safety of affordable housing. Additionally, I would like to take this same structure of data collection and analysis and apply it to other subsidies popular in New York City, such as the Low-Income Housing Tax Credit (LIHTC) and 421-a tax incentive program. Such additional studies would provide a more complete understanding of affordable housing in New York City and allow for the future creation of better, safer affordable housing programs.

Appendix:

Table 1.

```
. areg bbl_violations_year_count _mitchelllama IY1- IY62, absorb(cd)
note: IY1 omitted because of collinearity.
note: IY2 omitted because of collinearity.
note: IY3 omitted because of collinearity.
note: IY4 omitted because of collinearity.
note: IY5 omitted because of collinearity.
note: IY6 omitted because of collinearity.
note: IY58 omitted because of collinearity.
note: IY59 omitted because of collinearity.
note: IY60 omitted because of collinearity.
note: IY61 omitted because of collinearity.
note: IY62 omitted because of collinearity.

Linear regression, absorbing indicators             Number of obs     =  8,833
Absorbed variable: cd                               No. of categories =     47
                                                    F(52, 8734)       =  20.81
                                                    Prob > F          = 0.0000
                                                    R-squared         = 0.1523
                                                    Adj R-squared     = 0.1428
                                                    Root MSE          = 6.8084

------------------------------------------------------------------------------
bbl_violati~t | Coefficient  Std. err.      t    P>|t|     [95% conf. interval]
--------------+---------------------------------------------------------------
_mitchelllama |   1.686632   .1982757     8.51   0.000     1.297965    2.075299
          IY1 |          0  (omitted)
          IY2 |          0  (omitted)
          IY3 |          0  (omitted)
          IY4 |          0  (omitted)
          IY5 |          0  (omitted)
```

Table 2.

```
. areg bbl_violations_year_count age_at_insp ML_Coop_dummy ML_rental_dummy Apartment_Rental_dummy numViola
> tionsBoro IY1- IY62 , absorb(cd)
note: Apartment_Rental_dummy omitted because of collinearity.
note: IY1 omitted because of collinearity.
note: IY2 omitted because of collinearity.
note: IY3 omitted because of collinearity.
note: IY4 omitted because of collinearity.
note: IY5 omitted because of collinearity.
note: IY6 omitted because of collinearity.
note: IY58 omitted because of collinearity.
note: IY59 omitted because of collinearity.
note: IY60 omitted because of collinearity.
note: IY61 omitted because of collinearity.
note: IY62 omitted because of collinearity.

Linear regression, absorbing indicators             Number of obs     =  8,806
Absorbed variable: cd                               No. of categories =     47
                                                    F(55, 8704)       =  20.62
                                                    Prob > F          = 0.0000
                                                    R-squared         = 0.1602
                                                    Adj R-squared     = 0.1505
                                                    Root MSE          = 6.7878

------------------------------------------------------------------------------
bbl_violations_year_~t | Coefficient  Std. err.      t    P>|t|     [95% conf. interval]
-----------------------+---------------------------------------------------------------
           age_at_insp |   .0202128   .0075676     2.67   0.008     .0053784    .0350471
         ML_Coop_dummy |   2.375117   .2437913     9.74   0.000     1.897228    2.853006
       ML_rental_dummy |   1.150322   .2254014     5.10   0.000     .7084824    1.592163
Apartment_Rental_dummy |          0  (omitted)
     numViolationsBoro |  -.0005252    .000109    -4.82   0.000    -.0007388   -.0003117
```

Table 3.

```
. areg bbl_violations_year_count age_at_insp ML_Coop_dummy ML_rental_dummy Apartment_Rental_dummy numViola
> tionsBoro IY1- IY62 if bbl_violations_year_count<50 , absorb(cd)
note: Apartment_Rental_dummy omitted because of collinearity.
note: IY1 omitted because of collinearity.
note: IY2 omitted because of collinearity.
note: IY3 omitted because of collinearity.
note: IY4 omitted because of collinearity.
note: IY5 omitted because of collinearity.
note: IY6 omitted because of collinearity.
note: IY58 omitted because of collinearity.
note: IY59 omitted because of collinearity.
note: IY60 omitted because of collinearity.
note: IY61 omitted because of collinearity.
note: IY62 omitted because of collinearity.

Linear regression, absorbing indicators             Number of obs     =  8,773
Absorbed variable: cd                               No. of categories =     47
                                                    F(55, 8671)       =  33.44
                                                    Prob > F          = 0.0000
                                                    R-squared         = 0.2243
                                                    Adj R-squared     = 0.2153
                                                    Root MSE          = 3.5035

------------------------------------------------------------------------------
bbl_violations_year_~t | Coefficient  Std. err.      t    P>|t|     [95% conf. interval]
-----------------------+------------------------------------------------------
           age_at_insp |   .0183003   .0039069     4.68   0.000     .0106418    .0259588
         ML_Coop_dummy |   1.441637   .1261074    11.43   0.000     1.194437    1.688838
       ML_rental_dummy |   .5930675   .1164938     5.09   0.000     .3647119     .821423
Apartment_Rental_dummy |          0  (omitted)
     numViolationsBoro |   .0001564   .0000569     2.75   0.006     .0000449    .0002679
------------------------------------------------------------------------------
```

Table 4.

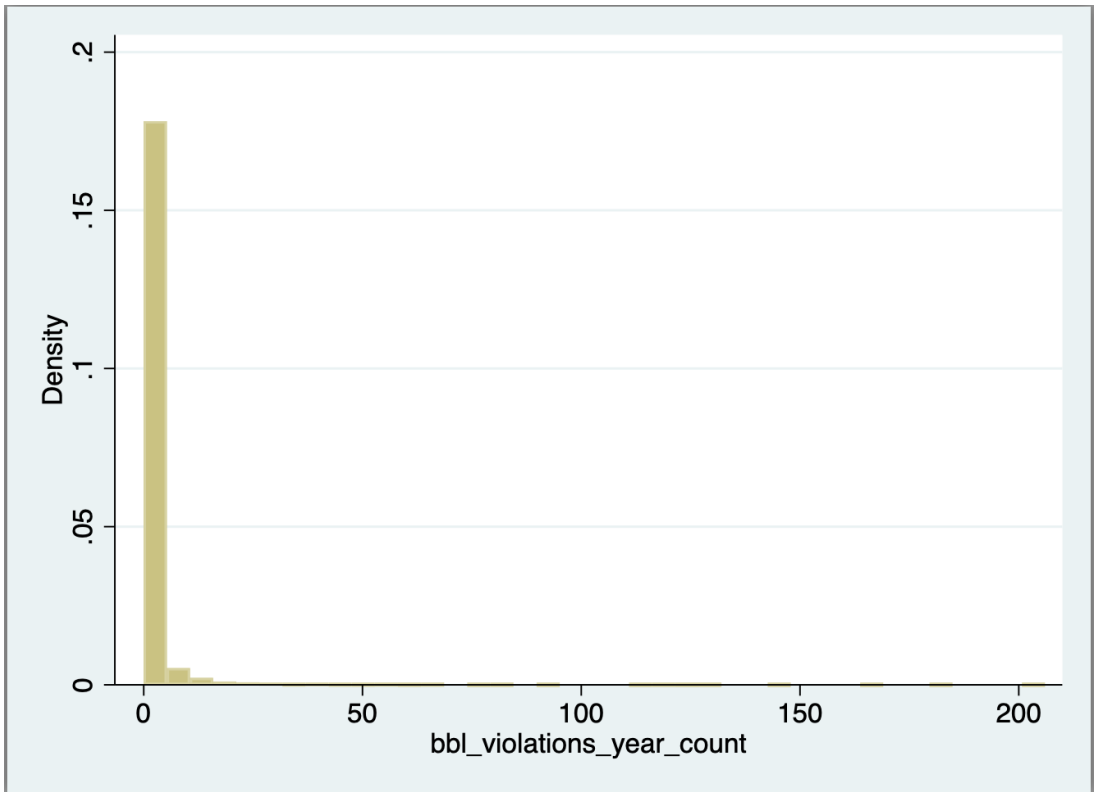

Table 5.

```
. areg bbl_violations_year_count  yte1 - yte20  numViolationsBoro if years_til_expiration<11 & _expired==1 , abs
> orb (bbl) robust
note: yte1 omitted because of collinearity.
note: yte2 omitted because of collinearity.

Linear regression, absorbing indicators             Number of obs     =    705
Absorbed variable: bbl                              No. of categories =     49
                                                    F(19, 637)        =   6.09
                                                    Prob > F          = 0.0000
                                                    R-squared         = 0.4701
                                                    Adj R-squared     = 0.4144
                                                    Root MSE          = 6.2065

------------------------------------------------------------------------------
bbl_violations_~t | Coefficient  Robust std. err.      t    P>|t|     [95% conf. interval]
------------------+-----------------------------------------------------------
             yte1 |          0  (omitted)
             yte2 |          0  (omitted)
             yte3 |   .4373339   1.463437     0.30   0.765    -2.43641    3.311077
             yte4 |  -1.810167   2.609532    -0.69   0.488    -6.934493    3.314158
             yte5 |   2.084569   1.760414     1.18   0.237    -1.372346    5.541485
             yte6 |   1.673862   1.824811     0.92   0.359    -1.909511    5.257235
             yte7 |   3.286481   1.759978     1.87   0.062    -.1695788    6.742541
             yte8 |   2.801425   1.663451     1.68   0.093    -.4650851    6.067936
             yte9 |   2.971562   1.775336     1.67   0.095    -.5146568    6.457781
            yte10 |   6.351517   2.229284     2.85   0.005     1.973882    10.72915
            yte11 |   2.508524   1.643874     1.53   0.128    -.7195428     5.73659
            yte12 |   3.494911   1.741888     2.01   0.045     .0743745    6.915448
            yte13 |   1.910231   1.393293     1.37   0.171    -.8257715    4.646234
```

Table 6.

bbl_violations_~t	Coefficient	Robust std. err.	t	P>|t|	[95% conf.	interval]
yte1	0	(omitted)				
yte2	0	(omitted)				
yte3	.4373339	1.463437	0.30	0.765	-2.43641	3.311077
yte4	-1.810167	2.609532	-0.69	0.488	-6.934493	3.314158
yte5	2.084569	1.760414	1.18	0.237	-1.372346	5.541485
yte6	1.673862	1.824811	0.92	0.359	-1.909511	5.257235
yte7	3.286481	1.759978	1.87	0.062	-.1695788	6.742541
yte8	2.801425	1.663451	1.68	0.093	-.4650851	6.067936
yte9	2.971562	1.775336	1.67	0.095	-.5146568	6.457781
yte10	6.351517	2.229284	2.85	0.005	1.973882	10.72915
yte11	2.508524	1.643874	1.53	0.128	-.7195428	5.73659
yte12	3.494911	1.741888	2.01	0.045	.0743745	6.915448
yte13	1.910231	1.393293	1.37	0.171	-.8257715	4.646234
yte14	2.524146	1.419051	1.78	0.076	-.2624369	5.31073
yte15	1.077025	1.268249	0.85	0.396	-1.413429	3.567479
yte16	-.5503674	1.180103	-0.47	0.641	-2.867729	1.766994
yte17	.3395384	1.187808	0.29	0.775	-1.992954	2.672031
yte18	.3120853	1.026962	0.30	0.761	-1.704556	2.328726
yte19	-.5094841	.9600731	-0.53	0.596	-2.394775	1.375807
yte20	-.3589921	.9255644	-0.39	0.698	-2.176518	1.458534
numViolationsBoro	.0006792	.0003487	1.95	0.052	-5.55e-06	.001364
_cons	-1.165591	1.0136	-1.15	0.251	-3.155992	.8248099

Variable Definitions:

A new variable, years_til_expiration, was created as the difference between inspection year and end date of subsidy in order to compare violations to proximity to Mitchell-Lama expiration. A positive value is associated with a pre-expiration inspection, and a negative value is associated with a post-expiration inspection. For example, an inspection conducted at -3 years_til_expiration corresponds to three years after the listed subsidy end date, while an inspection conducted at +3 years_til_expiration occurred three years prior to subsidy expiration.

Additionally, the variable bbl_violations_year_count serves as a tally of violations within one calendar year. For example, if there are 4 class C violations recorded for a single BBL within calendar year 2017, the value for bbl_violations_year_count for that BBL in the year 2017 would be 4. This allowed me to track any building-specific trends in violation incidence over time.

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