

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

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In 2005, the Bloomberg Administration launched a new Inclusionary Zoning (IZ) law in response to community based organizations' demand for guaranteed affordable housing in large upzonings. From this advocacy, the NYC Department of City Planning created the Inclusionary Housing Program's (IHP) "Designated Areas" program¹ and zoned sixteen areas for potential affordable housing development using voluntary inclusionary zoning.

While this voluntary inclusionary zoning policy was a first step, it has produced far fewer units than initially projected by the Bloomberg administration and failed to address the critical affordability pressures facing neighborhoods. **It is estimated that of the more than 21,000 new market-rate housing units built as a direct result of major upzonings in designated areas, ONLY 2,700 of those units (or 13 percent) are affordable housing units.**² The voluntary inclusionary zoning policy was a starting point, but the City can and must improve on these efforts. Without ensuring affordable housing is a part of all future housing development, the city's housing market will continue to squeeze out affordable housing and local residents will continue to be priced out of their communities.

The next mayor should **put in place a Mandatory Inclusionary Zoning policy in order to require affordable housing for the public good.** This policy would create clear and reliable rule across the city that guarantees a share of development as permanently affordable housing. A Mandatory Inclusionary Zoning policy would serve the public purpose with a cost-efficient policy that protects low-and moderate-income tenants by providing affordable housing opportunities to help address New York City's affordable housing crisis.

ANHD is grateful for the support from Capital One Foundation, The Robert Sterling Clark Foundation and the New York Community Trust.

¹"Inclusionary Housing Program", "IHP" and "voluntary inclusionary zoning program" as used in this report refer to the "Designated Areas" portion of the IHP program created in 2005 and excludes the older R10 portion of the program created in 1987.

²Lander, Brad, Freedman-Schnapp, Michael, & Ullman, Seth (August, 2013). Inclusionary Zoning in New York City: The Performance of New York City's Designated Areas Inclusionary Housing Program since it launch in 2005. Office of Council Member Brad Lander.

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

Over the past several years, Mayor Bloomberg's administration has aggressively pushed to reshape numerous neighborhoods through land use actions. The administration has led redevelopment initiatives that include more than two dozen area-specific plans in all five boroughs, comprised of some 115 rezoning plans covering more than 10,300 blocks. **Under the Bloomberg administration the City will have rezoned an astounding 40 percent of New York City.**³

As a part of this process, numerous communities have seen development projects change large city blocks or entire neighborhoods. In order to address the widespread concern about the growing high-cost of housing in neighborhoods the proposed Mandatory Inclusionary Zoning policy would build on and strengthen New York City's existing voluntary program and make it more effective.

The current Inclusionary Housing Program (IHP) Designated Areas program offers an "optional floor area bonus in exchange for the creation or preservation of affordable housing, on-site or off-site, principally for low-income households." Developments participating in IHP are required to set aside 20 percent of the dwelling units within a building or rehabilitate affordable units off-site within the same community district or within one-half mile of the development in exchange for a 33 percent density bonus. All IHP affordable units must remain permanently affordable.

IHP was a starting point, but it has created far fewer affordable housing units than projected by the Bloomberg administration. A report released by New York City District 39 Councilmember Brad Lander found that between 2005 and 2013⁴ just 2,769 affordable housing units were produced under IHP.⁵ This is just 12.8 percent of the number of market-rate multifamily units built in limited IHP "Designated Areas."⁶ And **only 1.7 percent of the more than 160,000 total market-rate multifamily units built citywide under the Bloomberg administration.**⁷

Furthermore the IHP units do not replacing the estimated 2,000 rent stabilized units that were lost to the market each year from 2005-2008.

³Satow, Julie (May 20, 2012). Amanda Burden Wants to Remake New York. She Has 19 Months Left. *New York Times*. New York edition., p. MB1

⁴All reported Inclusionary Housing Program Designated Areas data is as of June 2013.

⁵Lander, Freedman-Schnapp, & Ullman (August, 2013).

⁶ibid.

⁷ibid.

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

Critics point to a number of key challenges with the City's current Inclusionary Housing Program. Since the program is voluntary, many developers have opted out of participating in IHP generating far fewer affordable housing units than the city expected and then neighborhoods need. **Community boards have approved IHP zoning overlays with the expectation that they would generate affordable housing units, only to see little or no units created.**

The voluntary, non-binding structure of IHP can create uncertainty. For example at both the New Domino and Toll Brothers developments in Gowanus, Brooklyn the original owners' commitment to create affordable housing is now in doubt after the properties were sold since there is no guarantee of affordable housing development under the new owners. **Except for projects by non-for-profit community developers, the current system provides little assurance that communities will get promised and needed affordable housing.**

Developers have also found that the current IHP program could be better streamlined and is currently time consuming, difficult to navigate, and cumbersome, especially for smaller developers and those less familiar with city housing agencies. The program is not fully standardized, with a separate, individualized process potentially needed for each development. To date, buildings of less than 50 units have not produced a single affordable housing unit from the IHP program.⁸ And housing advocates criticize that IHP focuses solely on the physical dimensions of buildings and plots of land at the expense of meeting the needs of the residents who live, work and visit our neighborhoods.

In order to strengthen the current policy and ensure that new development include the affordable housing units communities want and desperately need the City must put in place a Mandatory Inclusionary Zoning policy. **This cost efficient policy, ensures a standardized process that would require developments in districts with an FAR of R6 or greater generate at least 20% of their units as affordable housing without accessing additional subsidies (off-budget).**

⁸Lander, Freedman-Schnapp, & Ullman (August, 2013).

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

Mandatory Inclusionary Zoning would establish a legally binding commitment for the creation of affordable housing through the City's regulation of land use. The policy would exempt small developments, but include **all residential land citywide zoned R6 or above, or C4-2 or above, and include any land use actions, regardless of size, that resulted in a change in use from manufacturing to residential.**

These developments would gain eligibility for a variety of benefits such as expedited processing, fee deferrals, or possible density bonuses. Affordable units would be developed on-site and within the development's private financing and could not be financed using city, state, or federal public funds.⁹

All projects seeking to gain eligibility for public funding would be required to either (a) increase the portion of set-aside affordable units or (b) decrease the Area Median Income (AMI) level of affordability for all set-aside units, per each additional public funding source. All affordable units would be permanently affordable and rent regulated in order to preserve the public value generated from the inclusionary zoning restriction. Any residents displaced as a result of the land use actions would be eligible for first right of return to the development project.

Developments resulting from qualified City land use actions would be required to set aside a greater percentage of the units as affordable housing.¹⁰ This policy would set a higher percentage of guaranteed affordable housing when the City uses its land use authority through rezoning, remappings, zoning amendments, special permits, authorizations, variances, large-scale residential developments, residential enlargements, extensions, and conversions, land acquisitions for city capital projects and disposition of city property.

⁹Public funding includes city, state and federal subsidies, loans, tax exemptions and abatements.

¹⁰This is in addition to the required set-aside of affordable housing units that do not require City land-use actions.

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

The **Mandatory Inclusionary Zoning policy would allow for a variety of alternative options to provide flexibility and prevent placing undue burden on projects.** Developments could appeal to the City Council for an exemption from part or all of the Mandatory Inclusionary Zoning restrictions. City Council will have the discretion to approve or deny all exemption applications. Projects could request either an (1) on-site exemption or a (2) in-lieu payment. These options would be in place to make the inclusionary zoning policy easier to use in order to consistently generate significant amounts of affordable housing. Providing flexibility for developers will ensure full program participation and implementation.

An *on-site exemption* would allow the developer to create the required affordable housing units as off-site new construction or preservation affordable units in the same community¹¹ as the associated market-rate developments. This option would support the development of permanent affordable housing in the same Community District or within a half mile radius of the affordable housing either as offsite new-construction or off-site "preservation projects" — funding existing affordable housing owned by mission-driven organizations to preserve their affordability. Building off-site does present challenges. Off-site new construction requires additional land acquisition, often loses economies of scale of on-site construction costs and coordination of the of new market-rate construction and affordable construction or preservation timelines. Likewise preservation projects face the difficulty of coordinating Certificates of Occupancy and the challenge of shepherding projects through economic cycles.

An *in-lieu payment* option would allow the developer to pay a fee into an affordable housing fund in place of the affordable housing requirement. These fees would be put into an affordable housing bank to be used for developing or obtaining affordable housing units in the same community as the associated market-rate developments. In-lieu payments would create a new funding stream for affordable housing while providing an alternative option for developers who found the on-site or off-site options a significant barrier to the development's successful implementation.

¹¹In the same community" is defined as in the Community District or half mile radius of the market-rate development.

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

A payment in-lieu bank does bring risks. In-lieu payments would need to be carefully calibrated to prevent creating a cheaper option than building on-site and off-site inclusionary units and be sufficient to create the required share of inclusionary units directly from the affordable housing fund. The City would need to develop a fair and productive pricing system that takes into account the cost of land in the community of the market-rate development. A payment in-lieu bank would also allow the market-rate development to proceed ahead the affordable development -the opposite arrangement of the current requirements. It would need to include a legal mandate to ensure the appropriate use of the banked in-lieu funds and the timely construction of all affordable housing units.

To be most effective, it must be clear and consistent that a reasonable portion of the market-rate development interests are being utilized for a public purpose as affordable housing through a transparent process.

The City should commission a Citywide nexus study to determine the proportionality between the restrictions imposed by a Mandatory Inclusionary Zoning policy and the impacts on development. This study will establish a clear nexus between the public affordable housing interests and proposed conditions on development.

In order to monitor this relationship on an ongoing basis there must be a transparent mechanism for understanding and disclosing how land-use actions change land value. The City must **require a monetary calculation of the potential value created for each specific parcel of land, at the time of the proposal as part of every land-use proposal.**

This calculation and disclosure should occur at the first step of the decision making process, be disclosed by individual parcel, not in total and have a clear, transparent, and consistent methodology. This will allow for communities, city officials, city agencies, and developers to have full knowledge of the increased land value and ensure that the inclusionary zoning is being implemented as a general applied regulation and not on an individual ad hoc basis. Furthermore it clear that formal tracking of an Inclusionary Zoning program's outcomes on a regular basis is necessary. The Mandatory Inclusionary Zoning units should be recorded in a centralized system in order to report and track compliance and outcomes of the policy.

MANDATORY INCLUSIONARY ZONING

ENSURING AFFORDABILITY IS A PART NEW YORK CITY'S FUTURE

Opponents of a mandatory inclusionary zoning policy argue that it will place an undue burden on developers and have a downward impact the local housing. However a 2009 report by the NYU Furman Center for Real Estate and Urban Policy found that **while Inclusionary Zoning has different impacts in different housing markets, its negative effects on prices and production have been "slight."**¹² The proposed Mandatory Inclusionary Zoning policy is designed to:

- Ensure public benefit from land-use actions approved by the City.
- Maximize the number of affordable housing units created citywide.
- Require units be permanently affordable and rent regulated to preserve long-term affordability.
- Limit the use of public subsidies for affordable housing units created under policy.
- Incentivize greater depth of affordability wherever feasible.
- Minimize the displacement or loss of manufacturing land.
- Prevent the displacement of residents from land-use actions.
- Prevent undue burdens on developers and provide flexible alternatives to inclusionary zoning.
- Encourage on-site development of affordable units whenever feasible.
- Provide transparency by reporting change in values under land-use actions and improving tracking

It is vital that Mandatory Inclusionary Zoning creates a net gain of affordable housing, and that existing residents are not harassed to make room for new developments. **Any development that would result in the loss of affordable housing would restrict the demolition or material alteration of a residential building without complying with a "certificate of no harassment" process** set forth in the Clinton Special District and other recently rezoned communities. A Mandatory Inclusionary Zoning policy would complement the need to reevaluate the 421-a Property Tax Exemption Program to incentive the production of affordable housing while improving the efficient and effective use of City subsidy dollars.

¹²Been, Vicki, Meltzer, Rachel & Schuetz, Jenny. (October 2, 2009). "Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets." *New York: Furman Center for Real Estate and Urban Policy*, p. 2, 3: http://furmancenter.org/files/publications/IZ_impacts_10-19-09_1.pdf.

MANDATORY INCLUSIONARY ZONING

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The pace and scale of development across NYC is now leaving low-, moderate, and even middle- income residents further behind with heavy rent burdens and struggling to find affordable homes. Large scale luxury developments like Atlantic Yards, Hunter's Point South, Hudson Yards and more, are cropping up in neighborhoods throughout the city. Manufacturing or industrial areas are being converted to high-end commercial or residential corridors. As low and moderate density communities are green-lighted for higher density towers, the new projects alter the building type, density character and affordability of neighborhoods.

The affordable housing crisis in New York City has reached its most severe level in decades. Vacancy rates were extremely low at 3.12 percent in 2011 even prior to Hurricane Sandy.¹³ The crisis is likely to worsen as City population projections indicate that the will need an additional 318,500 units of housing by 2030.¹⁴ Of these, 96,500 units of will need to be for low-income families.¹⁵ This number does not include the over 50,000 New Yorkers who are currently homeless.

The housing crisis is so severe that a more intense effort to produce large numbers of new affordable units is absolutely necessary. **The City needs new tools to produce the affordable housing units that are and will be needed to keep New York a sustainable, livable city for all.** New York City must follow other large U.S. cities such as Boston, Chicago, Denver, San Diego, and San Francisco all of which have adopted guaranteed inclusionary zoning laws.

In order to generate the affordable housing units New York City needs, the City needs a Mandatory Inclusionary Zoning policy. Without directly linking affordable housing production to new development production and the City's growth, New York will continue to see high housing costs climb out of reach of more and more New Yorkers. New York's proud and committed residents deserve a place in the continued growth and future of the City.

ANHD is grateful for the support from Capital One Foundation, Robert Sterling Clark Foundation and the New York Community Trust.

¹³ Housing and Vacancy Survey, 2011.

¹⁴ Bromley, Alexandra et. al. (2012). Where Will New Yorkers Live? Overhauling New York City's Housing Policy. *Hunter College Department of Urban Affairs and Planning.*, p. 39, 40.

¹⁵ *ibid.*