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Gale A. Brewer, Borough President

December 11, 2015

Carl Weisbrod, Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Re: N 160051 ZRY – Mandatory Inclusionary Housing Text Amendment

Dear Chair Weisbrod:

I write in regard to the Department of City Planning's (DCP) application for an amendment of the Zoning Resolution ("ZR") of the City of New York to modify articles and related provisions concerning Sections 12-10, 23-10, 23-90, 62-80, 73-62, 74-00 and 74-40 in order to create a Mandatory Inclusionary Housing Program. The text amendment was put forth as part of the Mayor's Housing Plan in order to address the current affordable housing crisis and to promote integrated communities and neighborhoods. The program would apply to specific future developments located in either a neighborhood rezoning approved through the Uniform Land Use Review Procedure (ULURP) or pursuant to a ULURP-approved special permit that increases residential density and in turn require that a share of new housing be permanently affordable.

Affordable housing that serves a wide range of needs is an important goal. I believe all significant residential development in Manhattan should require some affordable housing, and have sought to accomplish this in projects I have reviewed as a City Councilmember and now as Manhattan Borough President. In recent years, I watched as residential development has become more and more opulent, with larger units and grander amenities. More and more frequently, these developments are built for those who do not intend to reside in them. This type of development forces up real estate prices and housing costs for everyone in the community and may often result in indirect displacement and a loss in neighborhood continuity. And this is a trend that is happening throughout Manhattan. For these reasons we need a mandatory affordable housing program in the city.

The need for increased affordable housing in new developments where rezoning of a neighborhood will allow for creation of significant new residential density is self-evident. However, in an already dense borough, I have misgivings about allowing the principal way of achieving affordable housing to be tied to significant upzonings, especially without explicit ties to anti-harassment provisions or a tenant protection plan. This pits proponents of significant density against advocates of affordable housing and fans concerns that the incentives to build are spurring gentrification and therefore raising rents.

My biggest concern about the program as currently proposed is that the affordable housing requirement may not justify the additional density that may be realized by developers. I understand the arguments behind a uniform, consistent, mandatory program that requires affordable housing where significant new residential density is introduced. My preference is that affordable housing not be tied to new residential density but rather to all residential development. Many developments – indeed the largest ones -- are as-of-right, oftentimes resulting from the merger of zoning lots, which allow development rights to be combined and result in enormous towers. Some development is made possible through applications for special permits that may allow residential use in zoning districts where residential use is not currently allowed. As I began to see these special permit applications come more regularly through ULURP my office began commenting on the need to require affordable housing where new residential use is being introduced into a neighborhood.

I also have concerns about the implementation of this program as proposed in the text amendment. These concerns center on the question of when the provisions requiring affordable housing in the case of special permits are triggered, protections against harassment for rent stabilized tenants, and transparency and assurances that money in the fund from Manhattan projects gets spent in the Manhattan community district that generated those monies. Also, I have heard from many of the Manhattan community boards that the affordable housing income bands are inadequate and should allow for more housing at both the lowest and more moderate income levels.

However, I am very supportive of the provisions in the current proposal that would require private applicants for special permits (for residential conversion or construction) to provide affordable housing because this is a major step toward requiring individual residential projects to help meet this significant need. Since there can be difficulties with applying this type of solution to all residential construction, it is even more essential that before any program is finally approved, the City Planning Commission (CPC) and the City Council ensure that the percentages of affordable housing required by the program are as high as possible.

In addition, the administration has demonstrated a willingness to work towards significant changes that I and the Manhattan community boards are seeking. Moreover, the administration has committed to work with me on improving the quality and quantity of affordable housing units created by the R10 and Voluntary Inclusionary Housing Programs applicable in so much of Manhattan. For these reasons I support the MIH text amendment, but only if the conditions outlined in this recommendation are satisfied.

As part of my consideration, I took into account the Manhattan Borough Board resolution recommending disapproval with conditions issued on November 30, 2015, all of the Manhattan Community Board resolutions, the testimony received and heard at the Manhattan Borough President's Public Hearing on this matter on November 16, 2015, the letters submitted by Manhattan elected officials on March 25, 2015 and November 17, 2015, and all relevant materials provided by the Department of City Planning pursuant to Section 201 of the New York City Charter as related to the text amendment N 160051 ZRY. In addition, this recommendation is based upon the letter dated the same date as this recommendation from the Chair of the City Planning Commission and Commissioner of HPD outlining our discussions on MIH and their

commitments to my office attached hereto as Appendix II. For more information on the background behind my consideration, please see Appendix I to this letter.

BOROUGH PRESIDENT RECOMMENDATION

We need a mandatory affordable housing program, and I said so in a letter that I sent to HPD and DCP on August 1, 2014 following discussions on a development in Riverside Center that managed to take advantage of a number of the existing loopholes in the current voluntary program. Although a significant part of this program will be tied to neighborhood upzonings, the proposed MIH program also uses special permits to capture affordable housing from developers introducing residential units into non-residential districts. A mandatory housing program such as the one currently proposed with the improvements outlined below, together with an administration commitment to an improved Voluntary Inclusionary Housing Program, will aid the city in achieving its housing goals and should address any existing concerns with the voluntary programs:

1) Improvements to Voluntary and R10 Programs: Significantly, the administration has committed to work with me on amendments to the R10 and Voluntary Inclusionary Housing Programs applicable in so much of Manhattan which could result in more and better affordable housing through these programs. Indeed, HPD has already commenced a review of the offsite option in the voluntary program. I am confident these changes will result in a greater amount of affordable housing achieved through these programs as well as the elimination of problematic and stigmatizing outcomes such as developments with “poor doors.”

2) When MIH will be required: Over the last two years this Office has expressed concern that special permits have allowed the introduction of new residential units into certain neighborhoods by developers without a requirement for affordable housing. The current proposal states that affordable housing requirements are not applicable to residential developments of fewer than ten units or 12,500 square feet. Were this minimum threshold to be maintained, some of the loft buildings in the SoHo/NoHo area which have been converted in recent years to residential use might not be subject to the requirements contained in this proposal.¹ Therefore, DCP and HPD have agreed to review the square footage threshold for application of MIH to special permits in certain neighborhoods in Manhattan.

3) Fund for affordable units remaining in communities: In addition, while this Office has called for consideration of a fund for affordable housing to be seeded by developers of small projects, this alternative was called for only if an actual requirement for onsite affordable housing could not be accomplished. I continue to believe onsite affordable

¹ Borough President Recommendation, 37 Great Jones Street, ULURP application No. C 140114 ZSM (Borough President recommended approval but residential floor area was 12,038 square feet; BSA Application 318-13-BZ, 74 Grand Street, May 6, 2014 (residential floor area of 10,807 square feet); BSA Application 77-13-BZ, 45 Great Jones Street, October 29, 2013 (residential floor area 11,697 square feet).

housing is preferable but understand that in some instances this may not be practicable or even legally feasible. (e.g. the minimum unit size in SoHo and NoHo is 1,200 square feet when converting to residential floor area per the condition 74-712(a)(1)(iii) of the special permit allowing such conversion). However, this Office and many of Manhattan's Community Boards have serious concerns over the operation of such a fund. In the current text there are virtually no requirements over the use of such funds and its operation is left to be defined in a set of guidelines not yet written. Manhattan Community Boards -- especially those in communities where housing prices are highest - - rightfully will not support a system in which funds are generated by multiple special permit applications which have a cumulative effect of introducing significant amounts of market rate housing into their communities, only to see these funds spent in other communities. So HPD and DCP have agreed to requirements to keep these funds tied to the community district for a minimum of ten years, and only to allow them to be used outside of the district after consultation with the Community Board and Manhattan Borough President. At no point would the money leave the borough. These requirements will be coupled with annual reporting on monies in the fund and the uses to which they are being put, broken down by community district.

4) Displacement and anti-harassment provisions: Communities are looking to the City to explain how it will work to fight displacement in communities where MIH is applied after increasing the development potential of a community by rezoning the area to allow for more residential density. This increase creates soft sites and ratchets up the existing development pressure. Anti-tenant harassment protections exist in the Special Clinton District and similar provisions must be considered as part of a larger anti-displacement strategy. If programs outside the scope of zoning requirements can sufficiently empower tenants and protect them from potential harassment, the administration must demonstrate the efficacy of these tools to deter harassment before it begins. Otherwise, anti-tenant harassment protections similar to those in Clinton/Hell's Kitchen should be included in MIH or promised in future neighborhood upzonings. Additionally, I believe that future study should be done to see how density increases can be tied to local hiring provisions, good jobs and acceptable labor standards to act against displacement and strengthen existing communities. These measures would provide a pathway for some who live in the rezoned communities to work and proposer where they reside.

5) BSA waiver of program requirements: The provision of the proposed text that would allow the Board of Standards and Appeals (BSA) to modify the requirements of the MIH program upon certain findings, including that the requirements for the percentage of affordable housing or income levels create an unnecessary hardship for the developer keeping him or her from making a reasonable return is very concerning to me as it was to the Borough Board. Community Boards have an unpleasant history of seeing hard fought zoning provisions avoided on hardship claims that are sometimes debatable. DCP has committed to revise the text for BSA modification of the requirements to ensure limited availability of waivers, provide more structure for review of such requests and require consultation with HPD before a waiver can be granted.

6) Affordable unit location: The next issue of concern is the baseline quality of the affordable units -- specifically their locations within projects and their comparability to market rate units. The requirement that where affordable units and market rate units are found in the same building, access must be by way of a common entrance is laudable. It will eliminate the stigmatization of affordable housing residents being forced to enter the building through a "poor door" allowed under the Voluntary Inclusionary housing program and criticized by this Office and many Manhattan Community Boards. But requirements that affordable units in mixed market rate and affordable housing buildings need only be distributed over half of the floors could lead to "poor floors." The Voluntary program requires affordable units to be distributed over at least 65 percent of the floors and in some instances Manhattan Community Boards have achieved even greater integration of units. Sixty-five to 75 percent unit distribution is what the administration should strive to achieve with their Mandatory Inclusionary Housing Program.

7) Location in separate buildings: My priority is that New York City and the Borough of Manhattan be comprised of diverse communities. The MIH program will best foster the goal of inclusive housing if the affordable units are ultimately integrated in the same building with the market rate units and not in a separate building next door. Admittedly there are impediments to integrated buildings that are currently outside the control of the City and State. Project financing is an oft-cited example of one of those impediments and it may be that without the onsite-adjacent building provisions, a project may be more likely to secure a BSA hardship variance and escape the MIH program entirely. But if the goal is inclusive development and communities, then the on-site, mixed building should be given priority and the use of the off-site or adjacent building used only as a relief valve under set circumstances or if the gain is higher in the number of affordable units. Both the onsite-adjacent buildings option and any offsite option should not be allowed to occur without additional consideration by HPD and the community as to the reasons why an integrated project is not feasible. HPD should not be able to sign off on the project's MIH requirements before the end of the review period. The alternative to this review could be an option to increase in the number of affordable units in the adjacent building.

8) Off-site provisions: It is important to point out that 421-a incentives² are not available to projects that build affordable units offsite. Yet, developers may choose to forgo the tax exemption benefits of 421-a while still complying with the requirements of MIH. Despite the widely held notion that development is not feasible in Manhattan without the property tax exemption, developers have chosen to abstain from participating in 421-a while enjoying FAR bonuses from older inclusionary housing programs. It seems that separating out the affordable units from the market rate units is an incentive in itself, equal to or greater than incentives offered by 421-a. Therefore I believe we should seek either a higher percentage of units or a deeper affordability when a developer utilizes that option, or seriously consider what would be the appropriate criteria for allowing that option to be exercised, such as community review.

² 421-a refers to New York State Real Property Tax Law §421-a.

The offsite provision pits property submarkets against one another by allowing developers to earn their floor area bonus by building the affordable units in the most inexpensive property market that they can justify in the inclusionary housing rules (same Community District or within a half mile as the project receiving the bonus) while using the bonus area in the area with the highest value. This multiplier is clearly an incentive on its own. The MIH program does not attempt to separate out projects using the offsite provision from the rules from projects that qualify for 421-a benefits by building all of the units onsite. Offsite projects should not be hamstrung by the State program when it does not contemplate that type of development in its development standards. Additional MIH affordability options should be available for offsite projects in addition to the two that are available throughout the borough and the Workforce Option that is only available in Community Districts 9 through 12. Additional options should reflect AMI bands that target families of very limited means or middle class families that are often left out of affordable housing programs in Manhattan below 96th Street.

Again we have made significant progress on this issue. The administration has committed to looking at the percentage requirement for offsite affordable housing in the Voluntary Inclusionary Program. Assuming a favorable review, I am confident that this would also result in an increase in the offsite requirements in MIH. This would recognize the fact that if there is a significant economic need on the part of the developer to use this less favored option, then the developer must provide more to the affected community in return.

9) Quality of affordable units: An additional concern is the continued quality of conditions in the affordable apartment units within a mandatory inclusionary project. Only by requiring an identical or substantially similar level of apartment appliances and finishes for market rate and affordable units, can we ensure that the affordable units will remain in good condition over the long run and not deteriorate more rapidly than the market rate units. The City must ensure that the warranty of habitability is maintained at the highest level from the first tenancy, and throughout the life of the building. Quality finishes that are made to last will show that this new affordable housing program recognizes the importance of maintaining a high quality standard of living for all tenants, a value that has regrettably been overlooked in the past.

10) Community Board input: Additionally, I have repeatedly asked HPD (most recently in a letter sent on February 10, 2015) to adjust the agency rules for referring affordable housing plans to Community Boards to ensure true input under the voluntary programs. These plans are sent by developers, but typically not with sufficient time for a Community Board to review the application, and with little or no guidance from HPD about what specifically can be weighed in on. I believe that this process could be strengthened by adjusting HPD policies, but this could also be included as part of an affordable housing text amendment. Since this referral process is mandated by the zoning, the text could be altered to provide more time for Community Board review, to clarify what elements of the plan should be presented to communities, and to make consistent the process for referral. That same level of clarity and consistency is important for Mandatory Inclusionary housing application referrals, and the intent of that referral

should be made clearer in the zoning text so as to better inform eventual agency guidelines.

11) Income bands: Clearly the Department of City Planning used great care to create AMI options that mirror those available in the New York State 421-a program. There is an argument that housing developers will look to take advantage of the State program to exempt their project from property taxes and thus the City's zoning resolution should not preempt those opportunities by mandating a certain mix of AMI bands that would preclude the project's participation in 421-a. This explains why the "Workforce Option" is not available in Community Districts 1 through 8 as the 421-a program prohibits the use of a 120% AMI average below 96th Street in Manhattan. Unfortunately, both the State and City restrictions do not reflect the diversity of needs that change from neighborhood to neighborhood in terms of the depth of affordability the mandatory units must achieve.

But the MIH proposal does not go far enough in working around the limitations of 421a and I feel that there are significant opportunities to diversify the menu of affordability options presented in the current version. The three options that dictate the weighted-average AMI bands in MIH do not reflect the diversity of need in Manhattan. The common refrain that echoed in the Community Boards, the borough-wide hearing and Manhattan Borough Board was that the options do not address the needs that exist. In communities where those with the lowest incomes are the most at-risk for displacement, the lowest average AMI band is 60%. The 120% AMI Workforce Option is limited to uptown community districts, where the need for apartments at less than the lowest 60% AMI option is greatest. In community districts 1 through 8, where the Workforce Option is not available, members of the community question if there is any room left for middle class families that often make too much for most affordable housing programs, yet still are unable to afford market rents.

I appreciate the administration's need for a program that has universal applicability and a citywide impact. However, the limited scope of affordability options prevents the program from responding to the economic differences in various neighborhoods. Fortunately, the administration has committed to work to tailor strategies to meet needs of different neighborhoods. I strongly urge the administration and City Council to provide additional options for affordable housing at the lowest income ranges as well as those in moderate/middle income bands.

A number of issues remain unresolved, and while I am encouraged by the commitments made by the administration to revise and improve these plans, additional work must be done especially to ensure adequate AMI bands and the provision of the greatest percentage of affordable housing in all circumstances. This would allow the program to respond to neighborhood needs across the city. I would also encourage the City Planning Commission and City Council to take their full review timeframe and carefully consider the recommendations from the individual Community Boards, Borough Boards, and Borough Presidents to ensure this city gets the best mandatory program it deserves and needs.

Thank you for your consideration of my recommendation and efforts in ongoing discussion on this important topic.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President

APPENDIX I. Background

PROJECT DESCRIPTION

The Department of City Planning referred out on September 21, 2015 a citywide text amendment known as MIH (N 160050 ZRY) that would amend the ZR to create a Mandatory Inclusionary Housing program that would require, through future zoning actions, a share of new housing to be permanently affordable. Such requirement would either be triggered through a neighborhood rezoning study that increases residential density, or through special permits subject to the city's Uniform Land Use Review Procedure (ULURP).

Background

Housing New York Overview

On May 5th, 2014 New York City Mayor de Blasio unveiled his administration's strategy for achieving his campaign goals of building or preserving 200,000 housing units over the next 10 years. Entitled 'Housing New York: A Five-Borough, Ten Year Plan', the document is a roadmap for the Department of City Planning and the Department of Housing Preservation and Development.

The plan calls for New York to become a denser city where economic diversity is a cornerstone of housing development. Together with development, the plan calls for the protection of existing affordable units against harassment as the city looks to make changes to the Zoning Resolution to increase the production of permanently affordable units by bringing down the cost of development while tying the creation or funding of affordable housing to increases in residential development potential.

Past Calls for Mandatory Inclusionary Housing

Before the beginning of the current administration, there was already a great deal of interest in improving the Voluntary Inclusionary Housing program that was instituted in conjunction with a number of rezonings during the Bloomberg administration. Various organizations called for a form of inclusionary zoning that did not rely on developers choosing to take the 33% bonus in floor area that came from setting aside 20% of the units as permanently affordable. Most notably, Manhattan Community Board 11 called for a Mandatory Inclusionary Housing Program and for the implementation to coincide with a rezoning strategy that they elaborated upon in their January, 2013 report.

In addition, this Office has repeatedly called for requirements that developers introducing market rate housing into neighborhoods through special permit be required to provide affordable housing and requirements that more affordable housing be required under the current Voluntary Inclusionary Housing Programs in which developers can opt to provide affordable housing in return for a density bonus in mapped district and R10 districts. Over a year ago in a ULURP application for a special permit for a use change to residential use at 102 Greene Street, this Office stated that, "the Manhattan Borough President would like to work with the Department of City Planning and CB2 to explore options for affordable and artist housing in smaller projects, especially if new residential units are added or existing JLWQA units are proposed for elimination."³ A few months later where a new luxury residential development was proposed to

³ Manhattan Borough President Recommendation, 102 Greene Street, C 140353 ZSM.

be built by special permit in an area zoned for light manufacturing in the Ladies Mile Historic District, this Office recommended disapproval and stated that if residential use were to be allowed, the area should be rezoned in a manner that required affordable housing.⁴ The developer subsequently agreed to provide four units of affordable housing.

Proposed Text Changes

The text amendment adds a new section, 23-154, to the New York City Zoning Resolution (“ZR”), entitled “Inclusionary Housing.” That section contains special floor area provisions for zoning lots in Mandatory Inclusionary Housing areas which provide that “no #residential development#, #enlargement#, or #conversion# from non-#residential# to #residential use# shall be permitted unless #affordable housing#... is provided or a contribution is made to the #affordable housing fund#....” However, this general requirement is subject to reduction or modification by special permit of the BSA pursuant to §73-624 of the proposed text (discussed in the final paragraph of this section on proposed text changes).

The MIH Program would be applicable in “Mandatory Inclusionary Housing Areas” and in the case of applications for special permits allowing for “a significant increase in residential floor area,” could be applied by the City Planning Commission where application of the MIH Program would be consistent with its goals. However, according to one of the final provisions contained in §23-154, the MIH program would not apply to “[a] single #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# of not more than 10 #dwelling units# and not more than 12,500 square feet of #residential floor area# on a #zoning lot# that existed on the date of establishment of the applicable #Mandatory Inclusionary Housing area#.”

Paragraphs (d)(3)(i) through (d)(3)(iv) of §23-154 set forth the options for the provision of affordable housing. A developer building in a Mandatory Inclusionary Housing Area must do one of the following: (1) make at least 25 percent of the residential floor area affordable to income bands the weighted average of which do not exceed 60 percent of the Area Median Income (“AMI”); (2) make at least 30 percent of the residential floor area affordable to income bands the weighted average of which do not exceed 80 percent of AMI; or (3) employ a “workforce option” as an alternative to options one and two in which at least 30 percent of the residential floor area is affordable to income bands that do not exceed 120 percent of AMI. This “workforce option” would not be permitted in Manhattan south of 96th Street, nor would it be permitted if the development were receiving City subsidies.

Section 23-154(d)(3)(iv) of the proposed text allows residential developments that increase the number of units by no more than 25 and increase residential floor area by less than 25,000 square feet to pay into an “affordable housing fund” instead of building the affordable housing. The fund would be administered by the Department of Housing Preservation and Development (“HPD”) and all contributions would have to “be used for development, acquisition, rehabilitation, or preservation of affordable housing, or other affordable housing purposes as set forth in the guidelines” promulgated by HPD (§23-011). The amount required to be paid into the fund would be “related to the cost of constructing an equivalent amount of #affordable floor area#, as set forth in the” HPD guidelines (§23-154(d)(iv)). The definition of the “affordable housing fund” would require that contributions into the fund be “reserved, for a minimum period

⁴ Manhattan Borough President Recommendation, C 140404 ZSM and C 140405 ZSM, 39 West 23rd Street

of time as set forth in the #guidelines#, for use in the same Community District..., or within a half-mile of such #MIH development# in an adjacent Community District” and allows HPD to create additional provisions regarding the use of the funds in the guidelines (§23-911).

In “Special permit approval in Special Purpose Districts” contained in §23-934, a new paragraph allows CPC to modify the requirements of MIH if a proposed #development#, #enlargement# or #conversion# facilitates significant public infrastructure or public facilities addressing needs that were not created by the proposed development itself.

In the “Methods for Providing Affordable Housing” contained in §23-94, a new paragraph (f) would be added that would require that if there is a Mandatory Inclusionary Housing site on a zoning lot that contains only affordable units, that that structure must either: (1) share a street entrance with any other building on the zoning lot that contains market rate residential units, (2) be a fully separate building from grade to the sky with its primary entrance on a street containing primary entrances for other residential buildings unless HPD approves another entrance after determining that such other entrance would not be stigmatizing.

Section 23-96 which contains the requirements for generating sites under the Voluntary Inclusionary Program requiring affordable units to be distributed over 65 percent of the floors in buildings that contain both affordable and market rate units would be amended. The amendment would contain requirements that in a new construction MIH building that contained market rate and affordable residences, the affordable units would have to be distributed over 50 percent of the residential floors. However, this requirement would not apply where the affordable units were all rentals and the market rate units were all condominiums (§23-96(b)).

The bedroom mix of affordable units under the Mandatory Inclusionary Housing Program would be the same as that under the current Voluntary Inclusionary Housing Program with affordable/market rate buildings required to provide either a similar percentage of multiple bedroom apartments (one-bedroom or greater and 2 bedroom or greater) or contain at least 50 percent 2 bedroom or greater units and 75 percent one bedroom or greater. Buildings containing only affordable units would have to comply with the 50 percent two or more bedrooms and 75 percent one or more bedrooms requirement. The size requirements for studios, one bedrooms and two bedrooms would be generally consistent with those for the Voluntary Inclusionary Housing Program (§23-96(c)).

The proposed MIH Program contains regulatory provisions similar to those found in the current Voluntary Inclusionary Housing Program, including that the affordable units be subject to a regulatory agreement, that the regulatory agreement be recorded and run with the property and that an administrator for the affordable housing which is a not-for-profit, unaffiliated with the developer be approved by HPD (§23-96). In addition, the provisions concerning rent of rental affordable units, sales price and resale of home ownership affordable units and income eligibility applicable to the Voluntary Inclusionary Program are made applicable to the Mandatory Inclusionary Housing Program. However, in the case of rental affordable housing units the rental provisions contained in the Voluntary Inclusionary Housing Program are made applicable to the Mandatory program “[u]nless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#.” (§23-961(b)).

Affordable housing units in the program are restricted to “qualifying households,” which are defined as “a #low income household#, #moderate income household#, or #middle income household# with an income not exceeding the applicable #income band# as specified in the special #floor area# provisions for #zoning lots# in #MIH areas# in paragraph (d) of Section 23-154 (Inclusionary Housing).” (§23-911).

The text amendment would add provisions requiring the MIH Application to contain the initial administering agent, the building plans, the number, bedroom mix and monthly rents or initial price as applicable of the affordable units and any other information HPD requires. The application would have to be delivered to the community board at the time of its initial submission to HPD (§§23-961 and 23-962).

Finally, the proposed text amendment would add a new section, §73-624, entitled “Reduction or modification of mandatory inclusionary housing requirements.” This section would allow the Board of Standards and Appeals to modify the requirements of the MIH program upon finding that the requirements for the percentage of affordable housing or income levels (1) create an unnecessary hardship whereupon the developer would be unable to make a reasonable return; (2) the hardship was not created by the developer or a predecessor owner of the property; and the modification of the MIH Program requirements are the minimum necessary to afford relief.

ANTICIPATED IMPACTS

On September 18, 2015, the Department of City Planning issued a Negative Declaration for the Environmental Assessment Study (EAS) for the Mandatory Inclusionary Housing text amendment (CEQR No. 16DCP02BY). Upon completion of the department review of the EAS for the MIH program, the agency determined that the proposed action would have no significant effect on the quality of the environment as the text amendment would have no impact until mapped or implemented through subsequent discretionary actions of the City Planning Commission.

COMMUNITY BOARD COMMENTS

At its Full Board meeting on November 19, 2015, Community Board (CB) 1 voted to oppose the text amendment as currently proposed. The Board stated a need for affordable housing for middle-income families, the workforce option in all districts, and the PIL option remaining permanently in the CB. The Board also raised issues and concerns with the proposal process, clarity on the objective standards of the proposal, concept of poor buildings on the same lot, BSA variance, possible displacement and need for tenant anti-harassment protections.

At its Full Board meeting on November 20, 2015, CB2 voted in support with conditions for the text amendment. The Board supports increased density for affordable housing and recommends applying MIH to VIH designated areas, allow developers to use workforce option in the district if they include more affordable housing across wider AMI bands, and request more information and oversight over the payment in lieu fund.

At its Full Board meeting on November 24, 2015, CB3 voted to deny the proposal unless certain conditions were met. The Board expressed a need for low income affordable housing and requested new developments include 50% affordable units with 40% of units 2-bedroom or larger and more affordable housing should be constructed if built off-site.

At its Full Board meeting on November 4, 2015, CB4 voted to support the proposal with conditions. The Board requests the affordable housing unit distribution requirement be increased to 80% of all floors of a building including co-operative and condominium buildings, equality in apartment finishes and accessibility to amenities. In terms of the PIL option, the Board suggests the contribution standard be based on the current actual costs to construct in the CB, an annual review of the contribution formula and standard, and that HPD consult with the local CB and council member on the use of the funds. The Board suggests applying the workforce option in CB 4, increasing the workforce option in Manhattan to 30% or more of the residential floor area, and implementing the VIH 45 day CB public comment period for applications.

At its Full Board meeting on November 12, 2015, CB5 voted to reject the proposal with conditions. The Board requested the text is amended to include an “Option 4” to set aside 50% of affordable units at 75% AMI, off-site affordable housing option is removed and suggested that in the BSA variance process where an applicant claims economic hardship, a developer can seek a time-limited subsidy from HPD to make a development economically feasible.

At its Full Board meeting on November 18, 2015, CB6 rejected the proposal as written and requested an additional 90 days to review the proposal. The Board suggested affordable housing developed on the same site or within the same building should be completely integrated with the access to amenities and finishes. The Board also recommends the workforce option AMI increased to 130% and applied to all CB’s, increased transparency for the PIL option, 2% of affordable units set aside for veterans and greater oversight of BSA variances.

At its Full Board meeting on November 4, 2015, CB7 rejected the proposal as written. CB7 proposed a public review process for MIH developments and requested additional information regarding the mechanics of the PIL option. The Board requested applicants develop more affordable housing if constructing offsite, the workforce option be available in all CB’s and further, if a building is demolished that contains rent regulated units, the new building should reconstruct those in addition to the required affordable units.

In a letter dated November 25, 2015, CB8 stated they do not support the text amendment as written. The Board stated this text amendment will encourage spot zoning, the AMI levels are not reflective of all NYC community needs and requested affordable housing tenants have equal access to amenities and the same finishes.

At its Full Board meeting on November 19, 2015, CB9 voted to disapprove the MIH text amendment as written. The Board is supportive of affordable homeownership opportunities through the proposal, and requested community input when MIH is applied, and more time to review the proposal.

On November 6, 2015 the Land Use and Housing Committees (which is constituted as a committee of the whole) of CB10 agreed to submit a letter voicing its concerns – first that the public review process was unduly rushed – as well as concerns regarding offsite affordable housing possibly being constructed across the Harlem River in the Bronx and the PIL option for smaller buildings. The Board suggested smaller buildings and rezoned areas provide 50% affordable units for low and very low-income residents. The Board also requested more oversight of the permanent affordable units in terms of maintenance and enforcement.

At its Full Board meeting on November 23, 2015, CB 11 voted to not support nor approve the text amendment but stated that with substantial improvements, the proposal could benefit the East Harlem community. The Board opposed the option to develop affordable units off site and to develop separate buildings on the same zoning lot. The Board letterstated the PIL option must be overseen by the CB for new construction and preservation of affordable housing and proposed new developments are 50% market rate, 30% moderate income, and 20% low and very low for CB 11.

At its Full Board meeting on November 24, 2015, CB 12 voted to deny the proposal unless certain concerns are addressed. CB 12 expressed concern that the construction of taller buildings will not result in better architectural design. The Board requested 50% community preference of units developed under the proposal and the apartments should be included in the rent stabilization system. The Board raised concern that this proposal could decrease affordability and change the neighborhood character.

BOROUGH BOARD COMMENTS

The Manhattan Borough Board met on a number of dates to consider the proposal known as MIH. The Manhattan Borough Board received its first briefing on the proposal on October 15, 2015. On November 19, 2015, as part of the chair report, Borough Board members discussed both the ZQA and MIH proposals. As not all Manhattan community boards had voted at that time, the decision was made to call a special meeting for a vote. On Monday, November 30, 2015, the Manhattan Borough Board passed, with 12 in favor, 0 opposed, and 4 abstaining, a resolution recommending disapproval of MIH unless the following conditions are satisfied:

1. The Administration recognizes and responds to the need for anti-harassment protection for residential tenants. Such protection is a necessary step to prevent the accelerated loss of stabilized units in areas where increased development potential incentivizes redevelopment of the existing housing stock;
2. The proposal is amended to provide greater clarity regarding on site, separate buildings and off-site provisions to ensure equal access to amenities and a higher standard of affordability when providing units off-site; and
3. The menu of AMI options should include a wider menu of options to cater to community preference when a project is otherwise ineligible for 421a benefits or when MIH is mapped to a development site through a special permit.
 - a. Expanded options should include the Workforce option and an extremely low AMI band option that captures lower average income levels. The overall

- percentage of affordable units for the entire project should be adjusted up or down according to the cross subsidy required.
- b. Projects that take advantage of the offsite provision should be required to build at deeper levels of affordability unless they acquire a special permit allowing them to build using the standard menu option.
 - c. Establish an option that would allow for increased affordable housing units in stronger real estate markets, adjusted up according to the cross subsidy provided.
- 4. Ensuring that the requirements for affordable housing are sufficient given benefits, incentives, and options provided to developers and multiple incentives result in additive benefits; and an elimination of the offsite option or, in the alternative, a requirement for significantly more affordable housing within the community district if the offsite option is employed;
 - 5. The text should establish minimum thresholds for consideration, as is done elsewhere in the text, for applicability triggers for the program;
 - 6. Payment-in-lieu (PIL) threshold should be lowered and the text clarified to reflect, especially given the larger new construction unit sizes in our communities, that the threshold is the lesser of the square footage or unit count;
 - 7. The zoning text should set a new standard for housing development monies by enshrining specific frameworks for governance, baselines, transparency, and strategy for use of the PIL funds, thus eliminating the possibility that future administrations may have different priorities and can unilaterally change the nature of such funds;
 - 8. The fund is allowed to be used for preservation and rehabilitation of units, and therefore there should be no sunset clause that allows those funds to be used elsewhere; Furthermore, the text should also elaborate that HPD will report on the strategy and usage of each fund to the relevant Community Board and elected officials. All funds generated through the PIL option must supplement, not replace, other city capital dollars for affordable housing;
 - 9. Text is amended to encapsulate a community referral process that establishes how much time the Community Board has to review the documents, and an acknowledgement that those concerns will be taken under advisement and that HPD will not act before their review timeframe is completed;
 - 10. The Board of Standards and Appeals (BSA) loophole must be tightened so that it will only be used in the presence of real hardship and not as the path of least resistance for developers who do not wish to build affordable housing. This could be achieved by adding specificity as to what might be considered “unique conditions” under which developers could seek BSA approval;
 - 11. Increase the affordable unit distribution threshold in the Mandatory program from 50% to 65% to come up to the minimum threshold currently in the Inclusionary Housing program;
 - 12. Ensure a reasonable mix of unit sizes; and

13. Create a central plan, including recordkeeping, for monitoring or oversight over affordable units including their re-lease.

The Borough Board resolution also stated that the Department of City Planning and the administration should respond to and address the individual concerns and conditions of the Manhattan Community Boards issued in response to the referral of the text amendment, as should the City Council in the case of any concerns and conditions that remain at the time of City Council action. In addition, it recommended all agencies should provide information and seek feedback from community boards as the implementation of the text amendment progresses.

The Manhattan Borough Board considered all of the Manhattan community board resolutions and letters in its deliberations and discussions, the testimony received and heard at the Manhattan Borough President's Public Hearing on this matter on November 16, 2015, the letter submitted by Manhattan elected officials on November 17, 2015, and all relevant materials provided by the Department of City Planning pursuant to Section 201 of the New York City Charter as related to the text amendment N 160051 ZRY.

BOROUGH PRESIDENT HEARING

On Monday, November 16, 2015 the Manhattan Borough President held a public hearing on the subject of the affordable housing text amendments – Zoning for Quality and Affordability (ZQA) and Mandatory Inclusionary Housing (MIH) Program – in order to inform the recommendation herein. Well over 250 persons attended the hearing and 55 speakers testified regarding the text amendments. The Manhattan Borough President Recommendation letter, dated December 10, 2015, submitted in regard to the ZQA application (N 160049 ZRY) discusses in more detail the comments concerning that proposal.

Of the 55 speakers who came to testify at the hearing, 26 speakers testified in opposition to the MIH proposal, and 9 speakers testified in favor. Those who spoke in opposition to the proposal included citywide organizations such as CAAAV Organizing Asian Communities, Community Voices Heard, League of Women Voters, Metropolitan Council on Housing (Met Council), the New York Landmarks Conservancy and Local 79 along with prominent neighborhood groups such as the Good Old Lower East Side (GOLES). For a full list of organizations that testified or submitted comments to the Manhattan Borough President, please see Table 1 on page 17.

Those who spoke in favor of this proposal included the American Institute of Architects New York Chapter (AIANY), Association for Neighborhood and Housing Development (ANHD), and the Municipal Art Society (MAS). Members of Manhattan Community Board 4 also came to speak; however, while they wholeheartedly support the goal of a mandatory program, their comments were more in line with those who spoke in opposition, citing the timidity of the referral text in achieving the true depth of affordability and equity they have negotiated on a project by project basis over the last decade in Hudson Yards, Chelsea, and Hell's Kitchen.

Those who spoke in favor and against all touched upon similar themes;. Substantively, all cited the need for affordable housing in New York City and how critical setting the appropriate AMI (area median income) options was for a successful program. Those who spoke in opposition called for the elimination of the workforce, or 120% AMI average option, and stated that a lower

AMI option would be more appropriate for the neighborhoods most in need. Those who spoke in favor cited the need for a broader range of options for flexibility to match the individual neighborhoods, and recommended changes to include one at a lower AMI such as 40 or 30 percent, and expanding the eligible areas for the workforce option to citywide.

Over and over again residents spoke to the need for a protection plan for those already living in the neighborhoods to be targeted for the Mandatory program. The current text includes no anti-harassment provisions, and speakers stated their fears and concerns that these programs would only help new residents and do nothing to help them or their families. This comment also often came up in relation to the AMI options, as many felt that the 60% AMI option would never get to the level of affordability needed in neighborhoods such as Inwood, where the average income is closer to 48% AMI, or East Harlem, where the average income is closer to 37% AMI.

Those who spoke in favor and in opposition also spoke to the need for transparency and reporting in the operations of the “payment in lieu” fund. Other consistent themes related to equity and stigmatization issues, such as the need to increase the distribution of units, ensure equal access to amenities, and whether an affordable building adjacent to a market rate one was any worse or better than the existing “poor door” in the current voluntary program. Testimony also touched upon the issue of union jobs, living wage, and construction safety impacts.

Additional concerns were raised by those opposed to the text regarding the public review process for the text amendments, including availability of information, environment review analysis, and timeframe for review, when the review timeframe for other equally complex citywide text amendments were extended when folks voiced the need for additional time. Furthermore, many who spoke on ZQA stated they could not contribute to the conversation on MIH at this time with the reason that they perceived the information in the text was lacking or incomplete.

Table 1: Organizations who submitted testimony or comments regarding Mandatory Inclusionary Housing to the Office of the Manhattan Borough President.

Organization Name
American Institute for Architects (AIA) New York
Association for Neighborhood Housing and Development (ANHD)
Bowery Alliance of Neighbors
Committee Against Anti-Asian Violence (CAAAV)
Coalition for Livable West
Community Voices Heard (CVH)/ Local 79
Friends of Lamartine Place Historic District
Friends of the South Street Seaport
FRIENDS of the Upper East Side Historic Districts
Good Old Lower East Side (GOLES)
Greenwich Village Society for Historic Preservation (GVSHP)
Harlem Keepers of the Flame
Landmarks West!
League of Women Voters
Municipal Art Society
Metropolitan Council on Housing
New York Landmarks Conservancy
New Yorkers for a Human Scaled City
NY Hispanics in Real Estate and Construction
Perry Street Crusaders
PPR Family Members of Evicted Elders
Riverside Neighborhood Association
Save Chelsea
Society for Architecture
Turtle Bay Association
Tribeca Trust
West Chelsea Block Association
West End Preservation Society

APPENDIX II. DCP/HPD Commitment Letter



City of New York

DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, NY 10038
nyc.gov/hpd

DEPARTMENT OF CITY PLANNING
120 BROADWAY 31ST FLOOR
NEW YORK, NY 10271
nyc.gov/dcp

December 10, 2015

Honorable Gale A. Brewer
Office of the President
Borough of Manhattan
1 Center Street, 19th Floor
New York, NY 10007

Dear Borough President Brewer:

Attached to this letter is a list of items we agree on reflecting recent discussions between the DCP, HPD and you with respect to the consideration of the Zoning for Quality and Affordability and Mandatory Inclusionary Housing text amendments. We are confident that we can continue to work together to achieve the goals stated in these items. The cooperation and input that we have received from you, Elected Officials and Community Board members thus far has been extremely valuable. We look forward to working further with you, and the entire Borough, as public review progresses.

After both of these proposals go through public review, the Department of City Planning and the Department of Housing Preservation and Development plan to investigate ways in which the current voluntary Inclusionary Housing Program can be updated to reflect your concerns. We look forward to advancing this priority together. We appreciate your continued engagement on refining the Inclusionary Housing Policy for the Borough of Manhattan, and sincerely look forward to our forthcoming progress.

Sincerely,

A handwritten signature in blue ink that reads "Vicki Been".

Vicki Been
Commissioner

A handwritten signature in blue ink that reads "Carl Weisbrod".

Carl Weisbrod
Chairman

Commitments

- Begin reexamination of voluntary IH program including R10 and designated areas with look at stigmatization issues (two door) and percentage of affordable units, upon approval of these text amendments.
- AMI language
- Distant off site language
- Special Permit Approach
- HPD language on standards for preservation/rehab work
- Monitoring of Inclusionary
- HPD description of the submission process and timing of when package goes to CB
- Revised language for BSA Special Permit
- Clarity that MIH applies for enlargements 23-154(d)
- Payment in Lieu fund language
- HPD language on anti-displacement

AMI Language

In Manhattan MIH will be applied to new neighborhood rezonings and special permit applications. In response to concerns from the BP and other stakeholders that IH options with average AMIs are not responsive to local needs, DCP will work with HPD to tailor a housing strategy for these neighborhoods with the BP and other stakeholders to address local housing needs. Such neighborhood needs would include analysis of the existing housing stock, income levels and census data.

Distant Off Site

The Borough President and other stakeholders have raised concerns about whether there should be a higher percentage of affordable housing required if an option for affordable housing on a separate zoning lot is provided. DCP and HPD are currently undertaking a review of utilization of the offsite option in the current programs in anticipation of working with the Borough President on improving the voluntary inclusionary program, which will inform policy on offsite proportion in inclusionary.

Special Permit Approach

We agree to consider how MIH would apply to special permits in light of the continuing stream of applications seeking to increase residential capacity in certain Manhattan neighborhoods

Preservation Standards

For any preservation projects funded out of the In-Lieu fees collected through the Mandatory Inclusionary Housing program, the following standards shall apply: All projects must comply with HPD's Standard Specification as detailed at: <http://www1.nyc.gov/site/hpd/developers/specifications-rehabilitation/master-guide-specifications-for-rehabilitation-projects.page> as the specifications relate to the project's HPD-approved scope of work. These Standard Specifications are used as a minimum

baseline guide for architects, engineers, and contractors who are performing work on HPD-assisted rehabilitation projects.

Depending on the scope of the project, an architect must execute a statement to HPD stating that in the architect's professional opinion, if the project is constructed in accordance with the HPD-approved plans, the completed building(s) in the project will be in compliance with the construction and design requirements contained in Chapter 11 of the New York City Building Code and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794) and implementing regulations at 24 CFR Part 8.

Projects must complete a Green Physical Needs Assessment (GPNA) that integrates energy and water audit protocols into a full roof-to-basement assessment of physical needs to ensure that the holistic needs of a property are addressed. Project sponsors must work with a Qualified Technical Assistance Provider as issued by HPD and HDC. The GPNA program has been established to help the City achieve its sustainability, energy and water efficiency goals as set forth in both *Housing New York* and *One City: Built to Last*. GPNA will integrate cost-effective measures into moderate rehabilitation projects financed by the City.

Substantial Rehab Projects

Projects which include all three of the following items within their scope of work are considered a Substantial Rehab Project:

- Replace heating system;
- Work in 75% of units including work within the kitchen and/or bathroom; and
- Work on the building envelope, such as replacement and/or addition of insulation, replacement of windows, replacement and/or addition of roof insulation, new roof, or substantial roof repair.

All substantial rehab projects, as determined by HPD, must achieve Green Communities Certification. (The Green Communities Criteria and Certification portal is available at www.greencommunitiesonline.org.)

Monitoring Inclusionary Housing

HPD currently monitors all inclusionary housing units generated through the Voluntary Inclusionary Housing program and will continue to do so. Existing systems and capacity are being expanded in response to growing demands generated from the Housing New York Plan, including new units resulting from the MIH program. In addition, the regulatory agreements are recorded on ACRIS – recorded on the property. In response to existing asset management concerns regarding re-leasing, the HPD Asset Management and Legal teams are developing new stronger and clearer policies that will also affect inclusionary housing units, including measures for monitoring the re-leasing of units.

HPD description of the submission process and timing of when package goes to CB

We intend for a copy of the MIH application to be delivered to the CB as notice of intent to provide MIH units in accordance with the ZR. HPD will require proof of CB notification before approving any MIH application. HPD will require the following for review and approval of an MIH application: So far these items are:

- Building plans
- Stacking Chart showing the location of the MIH units in a building as well as the bedroom mix of MIH units
- AMI level of each unit (HPD will set the rents)
- The Administering Agent that is responsible for monitoring the MIH units and that will work with HPD to ensure on compliance
- Proof of CB notification (until 10 business days have passed since CB notification)

The CB will get the first four items. MIH is a mandatory program. This means that developers that do not do business with HPD generally will have to come to us for approval as part of the development process.

BSA revision

We will amend the proposed zoning text to add greater structure to the BSA special permit for MIH, ensure that it offers relief only in exceptional circumstances, and require consultation with HPD before MIH requirements could be waived.

MIH Applicability to Enlargements

23-154(d), lays out requirements, we say it applies to developments, enlargements, or conversions from nonresidential to residential use.

(d) Special #floor area# provisions for #zoning lots# in #Mandatory Inclusionary Housing areas#

For #zoning lots# in #Mandatory Inclusionary Housing areas#, the following provisions shall apply:

(1) Except where permitted by special permit of the Board of Standards and Appeals pursuant to Section 73-624 (Reduction or modification of Mandatory Inclusionary Housing requirements), or as provided in paragraph (d)(4) of this Section 23-154, no #residential development#, #enlargement#, or #conversion# from non-#residential# to #residential use# shall be permitted unless #affordable housing#, as defined in Section 23-911(General definitions) is provided or a contribution is made to the #affordable housing fund#, as defined in Section 23-911, pursuant to the provisions set forth in paragraph (d)(3)(i) through (d)(3)(iv) of this Section, inclusive.

Payment in Lieu Period

HPD will track in-lieu fee deposits as they are received. The funds will be committed to fund new construction, substantial rehabilitation and preservation projects. The funds will be kept to fund projects, at the Community District level, for ten years. If

the funds cannot be committed to an affordable housing new construction or preservation project in the same CD within ten years, the funds can be made available at the Borough level for the same purpose, i.e., providing new construction affordable, substantial rehabilitation or for the preservation of affordable housing. HPD will make available a list of generated funds on an annual basis by Community District. HPD will inform the public, annually, about the funds generated, programmed and spent.

Funds generated would be earmarked for the CD where they were generated in for a period of ten years, with HPD reporting on the fund each year. If funds have not been programmed or spent by the tenth year, HPD will consult with the CB and BP on any affordable housing new construction, substantial rehabilitation or preservation options they may have within the community district. At or after the ten year point, HPD must consult with the CB and BP to discuss any consideration of options prior to allowing funds to be used elsewhere within the borough. If funds are released from the CD, the funds would then be used within the same borough. In no event will the funds be used outside of the borough. The report will include which funds were generated by which CDs, how much has been programmed or spent in which CDs, and the purpose of the spent funds (i.e. breakdown by new, preservation or rehabilitation) by CD.

Unit Distribution

While we understand the desire of many stakeholders for more affordable units to be located on upper floors of building, the proposed MIH program differs from the voluntary IH program in that the affordable units are expected to be cross-subsidized by market-rate units. Thus revenue from market-rate units is an important factor in the ability to achieve the higher set-asides of the new program. The proposed requirement for affordable units to be on 50% of floors is intended to recognize this factor in the feasibility of development, and allow a slightly greater proportion of units to be located on higher floors.

A real life example of this is 15 Hudson Yards. That address has 106 Affordable Rental units and 285 for sale units. They tried to do IH but couldn't because of the distribution. We have to forego 106 permanently affordable units.

See BAE analysis of view and height premiums attached to this document.

Neighborhood Preservation and Anti-Displacement Strategies

HPD with other city agencies are dedicating resources to aggressively fight displacement. Participation in neighborhood planning areas provides HPD with an opportunity to be more nuanced in developing new or increasing the deployment of existing resources to address the specific needs of a neighborhood based on building types, demographics, available data, and expressed community concerns. Each neighborhood is unique, and while there are anti-displacement strategies that can be applied across various NYC neighborhoods, experts generally agree that the application and certification required in existing anti-harassment zones are not addressing the core reasons for displacement. As such, HPD is convening advocates, legal, and housing and

community development practitioners to assist in strengthening existing and/or developing additional anti-displacement tools.

Currently, the administration has been assertive in its commitment to deploy anti-displacement resources, which will continue to evolve and be refined as we learn more, identify best practices, and respond to community concerns and the real estate marketplace.

- Legal Assistance: Significant funds, \$76 million by 2017, have been committed to pay for legal services for low-income renters being harassed or facing eviction;
- Enforcement: The NYS Housing and Community Renewal's Tenant Protection Unit, Attorney General, and NYC Department of Buildings are conducting joint inspections and following-up on enforcement actions to combat tenant harassment, which already have resulted in prosecutions;
- City Law: This fall, the Mayor signed three new measures into law (Intros. 757-A, 682-A, and 700-A) to protect tenants from harassment and outlaw aggressive 'buy-out' practices used to force tenants out of rent-regulated apartments.
- Task Force: The NYC administration created the Tenant Harassment Prevention Task Force to investigate and take action against landlords who harass tenants. The neighborhood planning and rezoning areas are the targeted places for these efforts.

While the City is funding a robust effort to provide legal services for tenant protections in the rezoning areas, the city funds legal services contracts throughout the city for tenants citywide, outside of the rezoning areas.

HPD provides funding to local Community Based Development Organizations for anti-eviction work and housing quality through its Neighborhood Preservation Contracts to help meet the goals of stopping tenant displacement, improving housing quality and generally encouraging property owners to enter into regulatory agreements with HPD. The Department for the Aging provides funding for legal services and social services for elderly. <http://www.nyc.gov/html/dfta/html/services/services.shtml>.

The above briefly describes various anti-displacement efforts, but does not include the various of preservation strategies that HPD is deploying, which work to both preserve existing rent regulated units, as well as create new affordable housing. For example, see the East New York Housing Plan, which will serve as the outline for formulating specific strategies to address the unique concerns in all of the neighborhood planning and rezoning areas. (<http://www1.nyc.gov/assets/hpd/downloads/pdf/East-New-York-housing-plan.pdf>).

Unit mix

The bedroom mix for an MIH site would be the same as is currently required for affordable housing that generates bonus floor area under the VIH program. Under those requirements, the bedroom mix must match the market-rate units or be at least 50 percent two-bedroom or more and 75 percent one-bedroom or more. However, the bedroom mix would not apply to affordable senior housing to allow senior housing to meet the needs of its target population. Bedroom mix is further governed by HPD term sheets when subsidy is used.

MANDATORY INCLUSIONARY HOUSING (MIH)

**MANHATTAN BOROUGH BOARD
RESOLUTION**

RECOMMENDING CONDITIONAL DISAPPROVAL OF AN APPLICATION BY THE DEPARTMENT OF CITY PLANNING PURSUANT TO SECTION 201 OF THE NEW YORK CITY CHARTER FOR AN AMENDMENT TO THE ZONING RESOLUTION OF THE CITY OF NEW YORK TO MODIFY ARTICLES AND RELATED PROVISIONS CONCERNING SECTIONS 12-10, 23-10, 23-90, 62-80, 73-62, 74-00 AND 74-40 IN ORDER TO CREATE A MANDATORY INCLUSIONARY HOUSING PROGRAM.

WHEREAS, The Department of City Planning (DCP) seeks a text amendment (N 160051 ZRY) in order to require that a share of new housing be permanently affordable; and

WHEREAS, Mandatory Inclusionary Housing requirements would be attached to public and private applications to the City Planning Commission (CPC) that allow for or create substantial new residential area. Zoning map changes that allow for greater amounts of residential density and special permits will be the major vehicle for applying the MIH requirements; and

WHEREAS, the population for New York City in 2040 is projected to be more than a million residents greater than the population that was counted by the 2010 Decennial Census; and

WHEREAS, the need for affordable housing in New York City is apparent and growing as the share of New Yorkers that are considered to be “rent burdened” -- with more than 30% of their income going towards payment of residential rent -- increases, while older affordable housing programs such as Mitchell-Lama, and rent stabilized apartments are becoming more scarce; and

WHEREAS, the many residential communities of Manhattan have diverse housing needs. The degree of affordability and formulaic requisite cross-subsidy will vary greatly within small geographies. Varied needs in Manhattan require that any program offer a diversity of affordability mandates; and

WHEREAS, the DCP reviewed the Environmental Assessment Study for the MIH program and determined that the proposed action would have no significant effect on the quality of the environment as the text amendment would have no impact until mapped or implemented through subsequent discretionary actions of the City Planning Commission; and

WHEREAS, Borough Boards shall review and make recommendations with respect to applications and proposals of public agencies and private entities for the use, development or improvement of land located in more than one district; and

WHEREAS, the proposed text amendment has the potential to change or impact the built environment in all 12 of Manhattan's Community Boards; and

WHEREAS, Borough Boards shall otherwise consider the needs of the Borough; and

WHEREAS, On November 19, 2015 the full board of Community Board 1 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 19, 2015 the full board of Community Board 2 approved a resolution recommending approval of the Mandatory Inclusionary Housing zoning text amendment with certain conditions; and

WHEREAS, On November 24, 2015 the full board of Community Board 3 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 4, 2015 the full board of Community Board 4 approved a resolution recommending approval of the Mandatory Inclusionary Housing zoning text amendment with certain conditions; and

WHEREAS, On November 12, 2015 the full board of Community Board 5 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 18, 2015 the full board of Community Board 6 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment; and

WHEREAS, On November 4, 2015 the full board of Community Board 7 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 10, 2015 the Land Use Committee of Community Board 8 (which is constituted as a committee of the whole board) agreed to submit a letter voicing its concerns regarding the text amendment; and

WHEREAS, On November 19, 2015 the full board of Community Board 9 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 6, 2015 the full board of Community Board 10 submitted a letter stating that the public review process was unduly rushed and that the Board could not take a position in support or opposition and outlining its concerns; and

WHEREAS, On November 23, 2015 the full board of Community Board 11 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, On November 24, 2015 the full board of Community Board 12 approved a resolution recommending denial of the Mandatory Inclusionary Housing zoning text amendment unless certain conditions are met; and

WHEREAS, Manhattan Borough President Gale A. Brewer on November 16, 2015 held a public hearing on Mandatory Inclusionary Housing, at which 55 speakers testified, of which 26 speakers testified in opposition to the proposal and 9 speakers testified in favor of the proposal; and

WHEREAS, Manhattan Borough President Gale A. Brewer and 27 other Manhattan elected officials at the city, state, and federal levels, after reviewing the proposal, and in consultation with community groups, wrote a letter dated November 17, 2015 to Chair Weisbrod of the City Planning Commission outlining the following concerns with the proposal known as MIH:

1. The proposal does not require all affordable units to be built within the main development and could allow construction of separate "poor buildings;"
2. The proposal institutes lower distribution requirements for affordable units throughout the building than other programs, moving in the direction of concentrating affordable units on "poor floors;"
3. The proposal fails to incorporate strong anti-harassment requirements to protect against forced displacement of existing tenants where new construction is strongly incentivized;
4. The proposal needs more specifics on how and when the MIH requirements would be triggered and enforced;
5. The proposal needs to lay out specifics on how the affordable housing fund will be run; and

WHEREAS, the Manhattan Borough Board has considered all of the aforementioned Manhattan Community Board resolutions in its deliberations and discussions, the testimony received and heard at the Manhattan Borough President's Public Hearing on this matter on November 16, 2015, the letter submitted by Manhattan elected officials on November 17, 2015, and all relevant materials provided by the Department of City Planning pursuant to Section 201 of the New York City Charter as related to the text amendment N 160051 ZRY and;

WHEREAS, the Manhattan Borough Board believes that the proposal for a Mandatory Inclusionary Housing program is an important tool in engaging the affordable housing crisis in New York City. There has been limited success with the previous voluntary incarnations of the inclusionary housing program and requiring the inclusion of affordable units in medium and high density zoning districts could be a potent generator of housing for New Yorkers if the program is designed to target populations that are in the greatest need with respect to each neighborhood in

this incredibly diverse borough. Given the limited scope and capacity and desire to rezone significant land area in Manhattan and the likelihood that the strength of the real estate market will endure, the proposed MIH amendment:

1. Provides a positive step to ensuring affordable units are constructed in the future;
2. Guarantees additional opportunities to require MIH units in Manhattan outside of rezoning neighborhoods by expanding applicability to special permits;

WHEREAS, the Manhattan Borough Board believes the MIH proposal, as currently drafted, raises the following concerns which are universal to the Borough of Manhattan:

1. There is an absence of anti-harassment measures for residential tenants;
2. Provisions allowing for on-site separate buildings and concentration of units within buildings, may create poor floors and poor buildings instead of poor doors;
3. If the program needs to be universal, then Area Median Income (AMI) options are not broad enough or deep enough to address all neighborhood needs;
4. Whether the requirements for affordable housing are sufficient given benefits, incentives and options provided to developers including an offsite option;
5. The lowering of required unit distribution in buildings from the minimum threshold of 65 percent in the Voluntary Inclusionary Housing Program to 50 percent in the MIH proposal concentrates, rather than integrates affordable housing units in a building, despite community board requests that the unit distribution exceed 65 percent;
6. There is no requirement for elements of universal design, equal amenities or equal finishes;
7. Triggers for when the MIH program would be triggered including certain unclear definitions, and minimum thresholds add uncertainty to the proposal;
8. The Payment-In-Lieu Option which allows for payments to be made into a "fund" raises concerns regarding threshold criteria for its use, timeframe for use of funds in the community, management of the fund and, transparency and oversight;
9. The text does not define the minimum action necessary to be considered an act of preservation or rehabilitation and thus eligible for monies from the fund;
10. Community Board review requirements are unclear and should be explicitly set forth so as to avoid issues with existing voluntary program;
11. There is no central plan for monitoring or oversight over affordable units, including their re-lease;
12. The provisions for Board of Standards and Appeals (BSA) review for waivers from the program could create a significant loophole;
13. Provisions are lacking to ensure a reasonable mix of unit sizes.

THEREFORE BE IT RESOLVED, that the Manhattan Borough Board recommends disapproval of the citywide text amendment, N 160051 ZRY, known as Mandatory Inclusionary Housing Text Amendment, unless the following conditions are satisfied:

1. The Administration recognizes and responds to the need for anti-harassment protection for residential tenants. Such protection is a necessary step to prevent the accelerated loss of stabilized units in areas where increased development potential incentivizes redevelopment of the existing housing stock;
2. The proposal is amended to provide greater clarity regarding on site, separate buildings and off-site provisions to ensure equal access to amenities and a higher standard of affordability when providing units off-site; and
3. The menu of AMI options should include a wider menu of options to cater to community preference when a project is otherwise ineligible for 421a benefits or when MIH is mapped to a development site through a special permit.
 - a. Expanded options should include the Workforce option and an extremely low AMI band option that captures a lower average income levels. The overall percentage of affordable units for the entire project should be adjusted up or down according to the cross subsidy required.
 - b. Projects that take advantage of the offsite provision should be required to build at deeper levels of affordability unless they acquire a special permit allowing them to build using the standard menu option.
 - c. Establish an option that would allow for increased affordable housing units in stronger real estate markets, adjusted up according to the cross subsidy provided.
4. Ensuring that the requirements for affordable housing are sufficient given benefits, incentives, and options provided to developers and multiple incentives result in additive benefits; and an elimination of the offsite option or, in the alternative, a requirement for significantly more affordable housing within the community district if the offsite option is employed;
5. The text should establish minimum thresholds for consideration, as is done elsewhere in the text, for applicability triggers for the program;
6. Payment-in-lieu (PIL) threshold should be lowered and the text clarified to reflect, especially given the larger new construction unit sizes in our communities, that the threshold is the lesser of the square footage or unit count;
7. The zoning text should set a new standard for housing development monies by enshrining specific frameworks for governance, baselines, transparency, and strategy for use of the PIL funds, thus eliminating the possibility that future administrations may have different priorities and can unilaterally change the nature of such funds;
8. The fund is allowed to be used for preservation and rehabilitation of units, and therefore there should be no sunset clause that allows those funds to be used elsewhere; Furthermore, the text should also elaborate that HPD will report on the strategy and usage

of each fund to the relevant Community Board and elected officials. All funds generated through the PIL option must supplement, not replace, other city capital dollars for affordable housing;

9. Text is amended to encapsulate a community referral process that establishes how much time the Community Board has to review the documents, and an acknowledgement that those concerns will be taken under advisement and that HPD will not act before their review timeframe is completed;
10. The Board of Standards and Appeals (BSA) loophole must be tightened so that it will only be used in the presence of real hardship and not as the path of least resistance for developers who do not wish to build affordable housing. This could be achieved by adding specificity as to what might be considered "unique conditions" under which developers could seek BSA approval;
11. Increase the affordable unit distribution threshold in the Mandatory program from 50% to 65% to come up to the minimum threshold currently in the Inclusionary Housing program;
12. Ensure a reasonable mix of unit sizes; and
13. Create a central plan, including recordkeeping, for monitoring or oversight over affordable units including their re-lease.

THEREFORE BE IT FURTHER RESOLVED, that, as an additional condition of this resolution, the Department of City Planning and the administration should also respond to and address the individual concerns and conditions of the Manhattan Community Boards issued in response to the referral of the text amendment, as should the City Council in the case of any concerns and conditions that remain at the time of City Council action; and all agencies should provide information and seek feedback from community boards as the implementation of the text amendment progresses.

Adopted by the Manhattan Borough Board on the 30th day of November 2015.



Gale A. Brewer
Manhattan Borough President
Chair of the Manhattan Borough Board