



City of New York

DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
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nyc.gov/hpd

DEPARTMENT OF CITY PLANNING
120 BROADWAY 31ST FLOOR
NEW YORK, NY 10271
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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,

Handwritten signature of Vicki Been in black ink.

Vicki Been
Commissioner

Handwritten signature of Carl Weisbrod in blue ink.

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.