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