

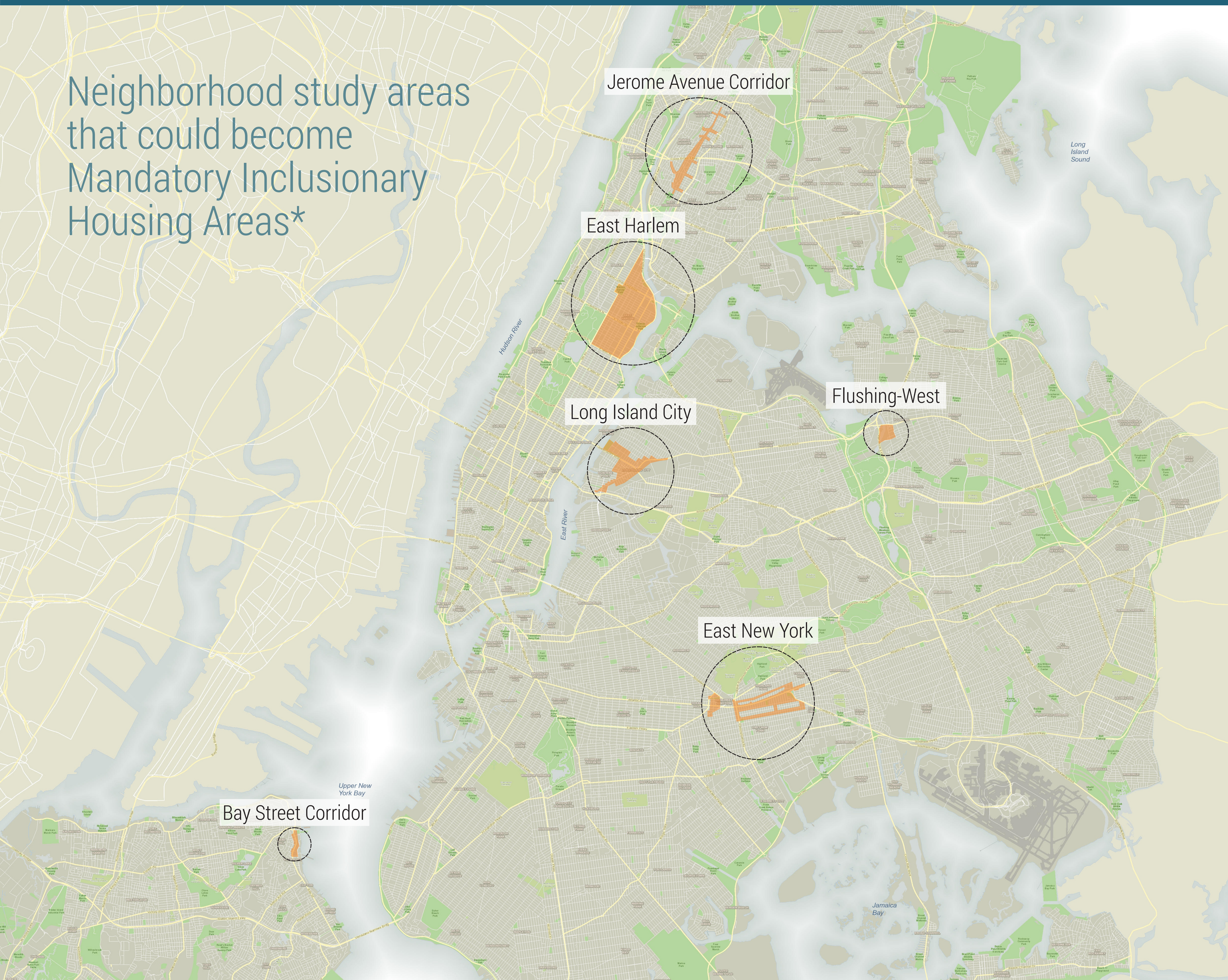


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Neighborhood study areas
that could become
Mandatory Inclusionary
Housing Areas*



In the Zone:
Updates on Mandatory Inclusionary Housing in NYC,
a Venable Breakfast Briefing
April 4, 2016.

**These areas are based on public information at the time of this program. Mandatory Inclusionary Housing Areas may differ from what is presented. In addition, private rezonings and certain special permits issued throughout New York City may be subject to Mandatory Inclusionary Housing requirements.*



In the Zone: Updates on Mandatory Inclusionary Housing in NYC

April 4, 2016

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Housing New York

A Five-Borough, Ten-Year Plan



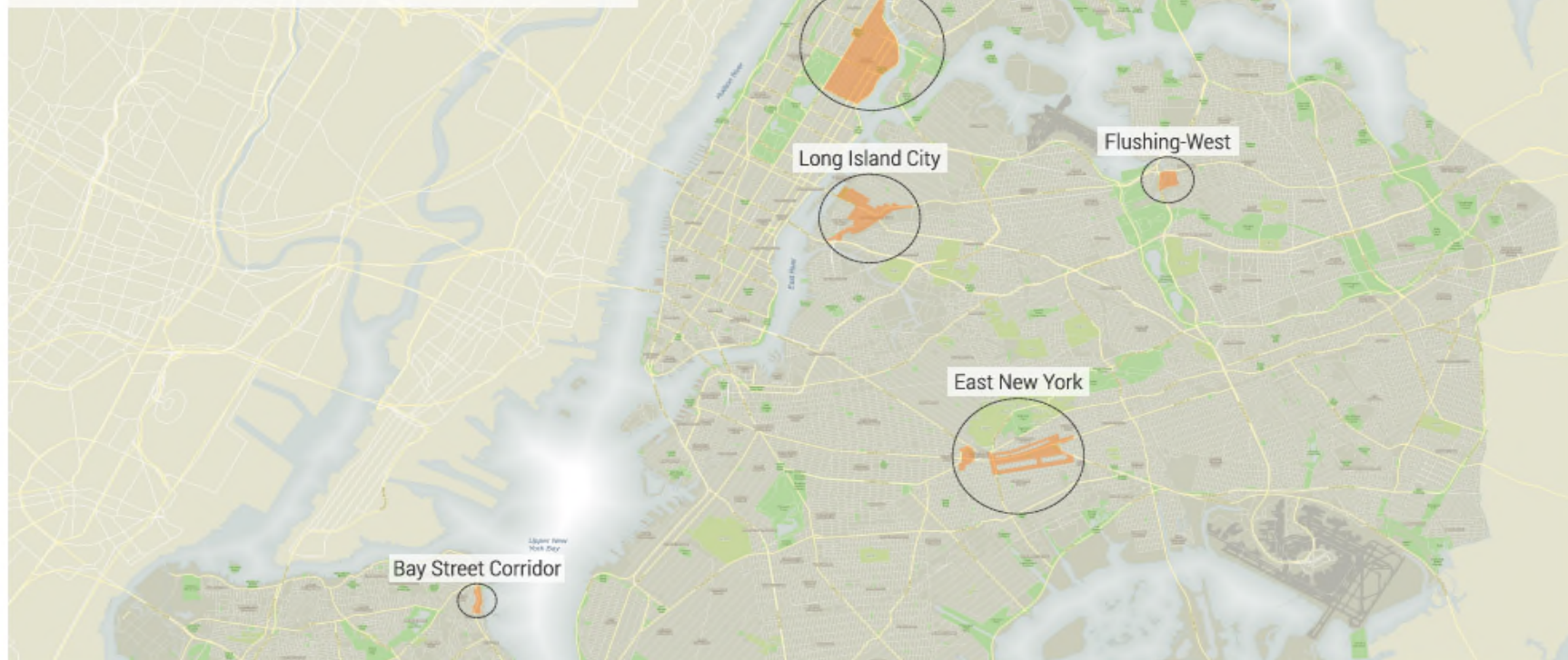
Where Are We Now?

- Timeline
 - September 2015: Initial MIH proposal
 - February 2016: Amended by City Planning Commission
 - March 2016: Further amended and approved by NY City Council



Mandatory Inclusionary Housing

Neighborhood study areas that could become Mandatory Inclusionary Housing Areas



In the Zone: Updates on Mandatory Inclusionary Housing in NYC, a Venable Breakfast Briefing, April 4, 2016.

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Maps by **Urban Cartographics**

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Affordability Options

Option 1	Option 2	Deep Affordability Option	Workforce Option
<ul style="list-style-type: none">• 25% at 60% AMI• No more than three income bands• At least 10% at 40% AMI• No income band greater than 130% of AMI	<ul style="list-style-type: none">• 30% at 80% AMI• No more than three income bands• No income band greater than 130% of AMI	<ul style="list-style-type: none">• 20% at 40% AMI• No more than three income bands• No income band greater than 130% of AMI• No public funding allowed*	<ul style="list-style-type: none">• 30% at 115% AMI• No more than four income bands• At least 5% at 70% AMI and 5% at 90% AMI• No income band greater than 135% AMI• No public funding allowed• Not available in Manhattan Core• Expires 10 years after effective date

**Unless HPD determines that public funding is necessary to support a significant amount of affordable housing in addition to the 20% at 40% of AMI.*



Area Median Income (AMI)

AMI	Income for Single	Rent for Studio	Income for Household of 3	Rent for 2br
40%	\$24k	\$600	\$31k	\$775
60%	\$37k	\$925	\$46k	\$1,150
80%	\$48k	\$1,200	\$62k	\$1,550
100%	\$60k	\$1,500	\$78k	\$1,950
120%	\$73k	\$1,825	\$93k	\$2,350

*Source: <http://labs.council.nyc/land-use/mih-zqa/>
Note: These figures are subject to change annually.*

Source: New York City Council Summary



MIH Units May Be Placed Off-site

Current Inclusionary Housing Program	Mandatory Inclusionary Housing Program
<ul style="list-style-type: none">• Generating Sites transfer IH development rights to market rate residential projects (Compensated Developments)• Compensated Development must be located in an R10 district or a Inclusionary Housing Special District• Bonus ratio generally determined by:<ul style="list-style-type: none">– Location of the Compensated Development– Method by which IH is provided– Whether public funding is utilized	<ul style="list-style-type: none">• MIH sites can build excess MIH floor area to qualify a market rate residential project for development in an MIH area, for a private rezoning, or for a special permit• Project must be within the same Community District as the MIH site or within ½ mile of the MIH site (with some exceptions)• MIH Site must then make an additional 5% of residential floor area affordable under MIH



MIH Requirements: Exceptions and Possible Waivers

- Exempt from MIH
 - Creating 1 – 10 units, 12,500 or less sf of RFA
 - Creating 11 – 25 units + creating 25,000 or less sf of RFA = can make a payment in lieu of providing MIH
 - 100% affordable independent residences for seniors are exempt
- Board of Standards and Appeals Waiver
 - Based upon existence of a hardship specifically created by MIH requirements
 - HPD to consult with BSA:
 - In the analysis; and
 - In determining whether and what relief to grant from MIH requirements



Zoning for Quality and Affordability

Questions?



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Mandatory Inclusionary Housing (MIH)

We are in an **unprecedented housing crisis**, and need more tools to counter market pressures – we need to protect our neighborhoods now.

We are enacting a pioneering program to **make affordable housing mandatory and permanent** wherever new housing capacity is approved through land use actions. It is, by far, the strongest and most flexible policy in the country.

When **combined with our broader housing plan** – including City subsidies and neighborhood investments – it will create tens of thousands of affordable apartments in high-quality neighborhoods, while stabilizing those neighborhoods for years to come.

How it works

When new housing capacity is approved through land use actions, the City Planning Commission and the City Council **can choose to impose either one or both of these two basic options**:

	Affordable housing set-aside	Area Median Income (AMI)	Maximum annual income (example for family of three)
1	25%	60% (on average)	\$47,000 (on average)
2	with 10% required at 30%	40%	\$31,000
	30%	80% (on average)	\$62,000 (on average)

The City Planning Commission and the City Council **may also add one or both of two other options**:

	Affordable housing set-aside	Area Median Income (AMI)	Maximum annual income (example for family of three)
3*	20%	40% (on average)	\$31,000 (on average)
4**	30%	115% (on average)	\$89,000 (on average)
	with 5% required at 70%		\$54,000
	with 5% required at 90%		\$70,000

*This option cannot be used with subsidy unless more affordable housing is provided.

**This option cannot be used with subsidy.

City subsidies will mean projects can **reach even more families and lower-income households** than through this policy alone.

And our **\$1 billion fund for neighborhood improvements** will, together with investments in schools and other capital needs, complement the housing in neighborhoods where the City is planning new growth by building capacity in parks, street improvements, and public amenities that communities need.



These measures will provide **permanent affordable housing for our future** while **protecting our neighborhoods today**.

Learn more about *Housing New York* at nyc.gov/housing

NYC'S MIH Program will be the Nation's Strongest

	Boston	Chicago	District of Columbia	San Francisco	Seattle*	Existing NYC Voluntary IH Program	Proposed NYC MIH Program
Year Adopted	2000	2003	2006	2002	2001	1987 (R10) 2005 (IHDA)	TBD
Program Type	Voluntary	Voluntary	Mandatory	Mandatory	Voluntary	Voluntary	Mandatory
Duration of Affordability	50 years	30 or 99 years	Permanent	Permanent	50 years	Permanent	Permanent
Set Aside (%)	15%	10%	Varies	12% onsite 20% offsite	5%	4-5% (R10) 20% (IHDA)	20 to 30% onsite 25 to 35% offsite
Income Targets (AMI)	<70 to 100%	≤60 to 100%	<50 to 80%	≤55 to 90%	80 to 100%	< 80%**	Basic options at average of 60% and/or 80%; additional options at average of 40% and/or 115%

*Seattle's program is being reevaluated.

**NYC's Voluntary IH program is mostly <80% but includes special districts with options <80% to 175%.

Zoning for Quality and Affordability (ZQA)

We had zoning regulations that were written decades ago and didn't prioritize affordability – they were simply not up to the challenge of **addressing our housing crisis while protecting our neighborhoods**.

We have acted now. Our changes will:

1. Support the **creation of senior and affordable housing**
2. Make it easier and less expensive to **build affordable housing**
3. Improve ground floor spaces to **support neighborhood quality of life**

How it works

Increases building envelopes for senior and affordable housing to facilitate the building of space that is already allowed

Reduces unnecessary and expensive parking requirements so that taxpayer money can be redirected towards more housing, and so that seniors aren't stuck on long waitlists for affordable homes while development proceeds too slowly



(LiveOn NY)

Updates rules to allow for better-quality buildings and 5 feet for better ground-floor retail, like day-care centers and supermarkets – so affordability goes hand-in-hand with neighborhood quality of life



Outdated regulations were holding us back, so we **made targeted changes** to build an affordable New York.

Learn more about *Housing New York* at nyc.gov/housing

More and Better Senior Housing

ZQA will increase the production of affordable housing across the city.

- Allow seniors more options to stay within their communities as they age.
- Boost the creation of modern senior affordable housing and continuum of care facilities.
- Allow limited additional height in our service-rich communities that facilitate an independent lifestyle and a connection to the community.
- Allow senior housing projects to be more financially feasible, including with better community and outdoor spaces, by eliminating some zoning codes that favored the construction of parking lots over affordable housing.

Modest increases in overall building heights will protect neighborhood character while allowing more space for senior housing and buildings that can accommodate elevators and other essential features for seniors:

- Maximum of 1 additional story in low-density neighborhoods.
- Maximum of 2 additional stories in middle-density neighborhoods.
- Maximum of 3 additional in high-density neighborhoods.

The additional height allowed for affordable senior housing can never be converted to market-rate housing.

ZQA encourages the creation of nursing care, assisted living, and independent living facilities.

- For the first time it will enable these uses to be housed under one roof, allowing seniors to age in place and allowing couples with different and evolving care needs to remain together.
- Both affordable senior housing and long-term care facilities are required to provide common areas to serve the needs of their residents. ZQA allows these common facilities to be placed on the ground floor in the rear of the building, where previously only parking or commercial uses could be located.

Parking Requirements Eliminated for Affordable Housing



New area with waived parking minimums represents 90% of previous ZQA proposal.

Max building heights for IH/AIRS/LTCF in R6+ Districts

District	Existing	ZQA Proposal	ZQA Final
R6A	70	85	85
R7A	80	105	95
R7D	100	115	115
R7X	125	145 (AIRS)	145 (AIRS)
R8A	120	145	145
R8X	150	175	175
R9A wide street	145	175	175
R9A narrow street	135	165	165
R9X wide street	170	205	205
R9X narrow street	160	195	195
R10A wide street	210	235	235
R10A narrow street	185	215	215
District	Existing	ZQA Proposal	ZQA Final
R6 QH wide street AIRS IH	75	85	85
R6 QH narrow street AIRS	55	85	85
R7 QH wide street AIRS IH	80	105	105
R7 QH narrow street AIRS	75	105	95
R8 QH	120	145	145
R9 QH wide street	145	175	175
R9 QH narrow street	135	165	165
R10 QH wide street	210	235	235
R10 QH narrow street	185	215	215

Non-IH/AIRS/LTCF maximum heights for Quality Housing Buildings

District	Existing	ZQA Proposal	ZQA Final
R5D	40	45	40*
R6A	70	75	70*
R6B	50	55	50*
R7A	80	85	80*
R7B	75	75	75
R7D	100	105	100*
R7X	125	125	125
R8A	120	125	120*
R8B	75	75	75
R8X	150	155	150*
R9A wide street	145	155	145
R9A narrow street	135	145	135
R9X wide street	170	175	170*
R9X narrow street	160	175	160*
R10A wide street	210	215	210*
R10A narrow street	185	195	185
District	Existing	ZQA Proposal	ZQA Final
R6 QH wide street outside MN Core	70	75	75
R6 QH wide street inside MN Core	65	65	65
R6 QH narrow street	55	55	55
R7 QH wide street outside MN Core	80	85	85
R7 QH narrow street or wide street inside MN Core	75	75	75
R8 QH wide street outside MN Core	120	145	135
R8 QH narrow street or wide street inside MN Core	105	125	115
R9 QH wide street	145	155	145
R9 QH wide street	135	145	135
R10 QH wide street	210	215	215
R10 QH narrow street	185	195	185

* Additional 5' in C overlays and equivalents and in Residence Districts for Community Facility spaces outside Manhattan core.

Learn more about *Housing New York* at nyc.gov/housing



April 4, 2016

Update: Mandatory Inclusionary Housing Update: Where Are We Now?

On March 22, 2016, the New York City Council approved the ambitious affordable housing zoning amendment known as Mandatory Inclusionary Housing (MIH). The final version of MIH includes changes made to the original MIH proposal by the City Planning Commission and by the City Council, which expand the affordability requirements for certain projects, revise the previously proposed MIH Affordability Options, add a new MIH Affordability Option (there are now four such options) and revise criteria for projects qualifying for a reduction or waiver of MIH affordability requirements. MIH will be administered by the Department of Housing Preservation and Development (HPD) and the Department of Buildings.

MIH, upon implementation and with limited exceptions, will require that residential projects in rezoned areas (MIH areas) or projects seeking private rezonings make approximately 20% to 30% of all residential floor area permanently affordable units (aka MIH units) at specified area median income (AMI) levels, with rents at 30% of an AMI level adjusted for family size and utility allowance.

At this point, four MIH issues have become prominent:

Which MIH Affordability Options Will Apply to Projects in MIH Areas or to Private Rezonings?

- MIH as adopted contains four MIH Affordability Options, one or more of which may be applicable in rezoned areas (MIH areas) or to private rezonings.
- Option 1: 25% at weighted average of 60% AMI. At least 10% must be affordable at average of 40% of AMI, there shall be no more than 3 income bands, and no income band shall exceed 130% of AMI.
- Option 2: 30% at weighted average of 80% AMI. There shall be no more than 3 income bands, and no income band shall exceed 130% of AMI.
- Deep affordability option: 20% at weighted average of 40% AMI, and no income band shall exceed 130% of AMI. No public funding will be allowed unless HPD determines that public funding is necessary to support a significant amount of affordable housing that is in addition to the 20% at 40% of AMI.
- Workforce Option: 30% at weighted average of 115% AMI. At least 5% must be affordable at 70% of AMI, and at least 5% must be affordable at 90% of AMI. There shall be no more than 4 income

bands, and no income band shall exceed 135% of AMI. No public funding is allowed.

- The Workforce Option is not available in the Manhattan Core (Community Districts 1 – 8) and will expire 10 years after the effective date of MIH zoning amendment unless renewed.
- The Deep Affordability Option or the Workforce Option will only be made applicable in combination with Option 1 or Option 2. It is expected that, at the time that the City Council is to vote on rezoning areas to require MIH, the applicable MIH Affordability Options will be determined for each MIH area.

Financing / Underwriting Questions

The City's own economic analysis in support of the initial MIH proposal assumed that the 421-a property tax exemption (421-a Statute) would be available to mixed-income projects without radically more onerous affordability requirements than the MIH proposal and without the imposition of prevailing construction wage requirements.

As of January 15, 2016 the 421-a Statute expired because of the lack of a construction wage agreement between the Real Estate Board of New York and the Building and Construction Trades, and, unless and until 421-a is extended or replaced by a similar program, no property tax exemption will be available for most new construction on mixed-income projects that might be subject to MIH (with the possible exception of certain conversions of nonresidential properties into multiple dwellings). There is also the issue that 421-a, if extended or replaced, might contain a construction wage requirement. The property tax and construction wage uncertainties are already affecting residential development throughout NYC – and will certainly affect development in MIH areas or wherever private rezonings are sought.

Now that MIH as adopted imposes more restrictive affordability requirements than the initial MIH proposal and prohibits public funding for one or two of the MIH Affordability Options, private developers are asking how mixed-income projects can achieve a reasonable return. If subsidies are to be provided to such projects, they might temporarily help the underwriting, but not on a long-term basis. This is because MIH imposes permanent affordability, while 421-a uncertainties (discussed above) and the question of which MIH Affordability Options are available to projects (which will eventually be resolved) leave developers and lenders unable to determine property taxes, construction wages, rents, subsidy availability and other key aspects of underwriting mixed-income projects.

As these questions are answered and assuming they are resolved in ways that are compatible with a reasonable return on investment for private developers, developers' willingness to close on property, lenders' willingness to finance acquisition and development, and the number of mixed-income rental projects commencing construction will all increase.

Certain 100% affordable projects, by contrast, may be eligible to receive property tax exemptions under the 420-c program (if they receive low-income housing tax credits) or under Article XI of the Private Housing Finance Law (at the discretion of the City Council). Typically, 100% affordable projects will also receive significant subsidies from federal, state and/or city sources.

Potential MIH Locations and Vesting Prior to Rezoning

MIH requirements are anticipated to be applicable to rezonings in the following neighborhoods. The timing of rezonings will differ – they will be rolled out over time. To date the Department of City Planning has begun Neighborhood Studies in several neighborhoods in advance of potential MIH rezonings, and additional neighborhoods are likely to be added in the future.

- East New York in Brooklyn
- East Harlem in Manhattan
- Flushing West and Long Island City in Queens
- The Jerome Avenue corridor in the Bronx
- Bay Street in Staten Island

Developers and owners of property in potential MIH areas, as well as owners of properties that might seek private rezonings, should focus on what MIH might mean for them and whether to participate in the political process by which MIH Affordability Options will be determined for a rezoned area.

There is also the question of whether a project in an MIH area can vest under the pre-existing zoning (i.e., before a rezoning occurs) and before MIH requirements become applicable. Vesting must be analyzed on a case-by-case basis.

Exemptions from MIH Requirements

Exceptions from MIH requirements are available for smaller projects and for 100% affordable senior housing projects. Hardship relief from MIH affordability requirements can be requested by projects subject to MIH. The Board of Standards and Appeals, in consultation with HPD, is to adjudicate claims for hardship due to MIH requirements. Developers seeking hardship relief from MIH will want to focus solely on the hardships due to MIH, not to other conditions of their project.

Future Guidance

HPD is expected to issue guidelines and other materials on MIH procedures and frequently asked questions, which should provide additional guidance about MIH.

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New York Real Estate

February 25, 2016

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Before You Buy That NYC Development Site, Have You Done Your 421-a and Affordable Housing Due Diligence?

With a record number of new residential building permits issued in NYC in 2015, it is likely that many of these sites are now being marketed for sale as having been grandfathered for the 421-a property tax exemption, which can significantly reduce property taxes. But buyer beware! Prospective purchasers looking to buy and build such projects and who are relying on 421-a eligibility in their underwriting should be careful to verify that a project does indeed qualify for 421-a benefits before going hard on a contract. In the absence of 421-a benefits, new multifamily projects in NYC can expect to pay property taxes amounting to 25% to 30% of gross rental income, so 421-a eligibility is a very significant consideration.

Prospective purchasers and property sellers should keep in mind several considerations:

- Grandfathering a project for 421-a benefits may involve more than just installing an initial footing or foundation element.
- 421-a site eligibility must still be verified, even for projects that commenced construction in 2015 or earlier.
- Certain completion of construction deadlines apply to 421-a projects.
- Even if otherwise eligible for 421-a benefits, projects may need to provide affordable housing both to qualify for 421-a benefits and possibly to receive a zoning bonus under the Inclusionary Housing (IH) program. 421-a and the IH program each have their own requirements, and a project must comply with the more restrictive requirements of each program.
- 421-a is subject to certain construction requirements with which developers and project architects must comply.
- A project's commencement of construction date, location, affordable unit mix, and the mixture of residential and other uses will determine how 421-a benefits are to be calculated and the benefit schedule they will be calculated for.

Understanding the possible amount and schedule of 421-a benefits, and the affordability restrictions applicable to a particular project, will help developers to underwrite projects and determine their viability with greater accuracy.

If you have any questions about the above issues, please feel free to contact Daniel M. Bernstein at DMBernstein@Venable.com to discuss your potential acquisition.



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Venable's New York real estate group represents clients in virtually all areas of contemporary real estate activity, ranging from complex acquisitions and dispositions to zoning and land use, construction and development; real estate fund investments; formation of partnerships and other co-investment vehicles; financing; leasing; hotel and property management agreements; counseling on exemptions and development rights bonuses and commercial condominium transactions.

From our offices in Manhattan, we represent clients in real estate transactions in New York City and New York State, throughout the United States, and internationally. Working with our colleagues in Washington, DC, Los Angeles, Maryland, and Virginia, and through established relationships with local counsel in other states and countries, we are able to provide our clients with seamless service, regardless of property location.

Venable advises owners, investors, and corporate users of real estate in acquisitions, dispositions, and joint ventures formed to invest in real property. We serve diverse domestic and international clients on issues ranging from complex, multifaceted single-asset projects to sophisticated acquisitions of entire portfolios of properties. Our real estate attorneys have extensive experience in the formation of partnerships, limited liability companies, and joint ventures to acquire and finance real property. We frequently collaborate with attorneys in our tax group to maximize the tax benefits of these ownership structures through the formation of real estate funds and real estate investment trusts (REITs).

We are proficient in matters involving New York City and New York State agencies, with broad knowledge of government permitting, acquisition of government-owned property, government approvals of all kinds, and state and city funding and financing agreements. In addition, we represent governmental and quasi-governmental agencies and local development corporations in many complex projects in both New York City and New York State.

Another focus of our New York real estate practice is representation of nonprofit entities in all types of real estate and development undertakings. We are familiar with the special legal requirements relating to real estate transactions involving nonprofit entities, and we can offer institutions that have not previously engaged in such major projects the benefit of our expertise. We work closely with our Nonprofit Organizations Practice to advise our nonprofit clients regarding tax, corporate, and other issues that arise in the course of real estate operations.

New York City Economic Development Corporation – Willets Point



Represented New York City Economic Development Corporation in connection with the proposed sale for redevelopment of Willets Point a mixed-use project adjacent to Citi Field stadium in Queens. Our services have included simultaneous negotiations with multiple bidders, preparation and negotiation of a purchase and sale agreement, development agreements, ground leases and other transaction documents, compliance with the requirements of ULURP, advice in connection with ownership structuring to facilitate the grant of tax benefits and private financing, and advice regarding environmental remediation.

Amtrak-Gateway Tunnel



Representing Amtrak in connection with the construction of its new tunnel right-of-way under the Hudson Yards development project on the West Side of Manhattan. This highly complex project involved the drafting and negotiation of agreements not just with the design/builder of the project, but also with the Related Companies (developer of the 6 million sq. ft. mixed-use project above the tunnel) and MTA/Long Island Rail Road, beneath whose West Side Yards the tunnel is being built. The transaction involves federal, state, and city approvals and compliance with procurement requirements.

Jazz at Lincoln Center – Rose Hall Performance Center



Represented Jazz at Lincoln Center in all aspects of development and construction of the Frederick P. Rose Hall. This 175,000 square foot facility is part of the two million square foot mixed-use Time Warner Center condominium development on the former New York Coliseum site at Columbus Circle. The \$180 million cost of design and construction of the Jazz facility was funded through a public-private partnership that included a \$34 million grant from the City through the Department of Cultural Affairs. Our attorneys negotiated Jazz's participation in the development with the City, the MTA, and the selected developer, a venture of The Related Companies and Apollo Real Estate, with participation by Time Warner and Mandarin Oriental Hotels. We also handled two restrictive declarations, the development agreement, and the structuring of the condominium regime.

Brooklyn Navy Yard – Admirals Row



Represented the Brooklyn Navy Yard Development Corporation (BNYDC) in the negotiation of the Admirals Row development. The deal involved the leasing of over 6 acres of the Brooklyn Navy Yard to a developer who will invest several million dollars to construct over 300,000 square feet. The representation included the drafting and negotiation of two major ground leases which require the construction of approximately 300,000 square feet of new space including supermarket space, retail uses, the adaptive re-use of two historic structures, related parking facilities, and the lease of 125,000 square feet of light industrial space to BNYDC for eventual sublease to end-users in accordance with BNYDC's mission to promote local economic development and job creation, develop underutilized areas and oversee modernization of the Yard's infrastructure and assets while maintaining its historical integrity.

