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Return of Rent Control: Brad Lander and Candidates Push for Mandatory Inclusionary Zoning

By Stephen Jacob Smith | 8:00am

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In 1971, the State of New York passed the Urstadt Law, which took away New York City's ability to set rent controls that were stricter than what the state—dominated by considerably more conservative upstate politicians—would allow. For 25 years the city has tried to coax developers into creating affordable housing through “inclusionary zoning” programs, which dangle density bonuses and tax abatements in exchange for building (or in some cases, maintaining) below-market apartments in their new buildings or nearby.



Some developers take the bait, but not many. Now, as Michael Bloomberg's 12 years are up, his would-be successors running in the Democratic primary seem to have found a way around the Urstadt Law: [they want to make the inclusionary zoning programs mandatory](#).

Sensing that the time is right, Park Slope councilman Brad Lander and the Association for Neighborhood and Housing Development have [coordinated the release of reports](#) on how inclusionary zoning's track record so far and how to make it mandatory.

The first thing that stands out are how low the numbers of units produced through the program are. Only 1.7 percent of all units built since 2005, or 2,769 apartments, were built through inclusionary zoning programs—a rounding error in the city's multimillion-unit housing stock—and the units were concentrated in northern Brooklyn and in neighborhoods west of midtown. (Most below-market units created were built through other programs.) Construction has been suppressed due to the market crash for the past few years, limiting the number of units produced, but rents have continued to rise.

Neighborhoods that are eligible for inclusionary zoning but saw no new units include Flatbush, Sunnyside, the Upper West Side and Tribeca.

One of the reasons that Chelsea and the Hudson Yards area gained so many inclusionary

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zoning units relative to other neighborhoods was that the West Side rezonings strongly encouraged the program. "Because of the leadership of councilmember Christine Quinn," [said one state assemblyman](#), inclusionary zoning was "effectively, if not technically, mandatory" in Hudson Yards. Additionally, the base density allowance was lowered from the original proposal, giving developers a stronger incentive to use the program *without* granting them any more density or abatements; the technique that was repeated during the West Chelsea rezoning.

But by making the program technically, not just effectively, mandatory, the city could run into an Urstadt Law challenge. Mandatory inclusionary zoning looks a lot like a rent control program for new development, and the state has exempted new construction from rent regulations out of fear that it would make building uneconomical.



Of 7,218 total units built in northern Brooklyn, 949—or 13 percent—were inclusionary units, second only to Manhattan's West Side.

But NYU Law professor Vicki Been, director of the Furman Center for Real Estate and Urban Policy, said in an email that the legality would depend on the implementation—for example, "whether the rent for the affordable units was governed by the Rent Guidelines Board or pegged to HUD fair market rents and whether the developer received some bonus for building to IZ units." But she also said that she suspects the city could prevail given past legal precedent.

Aside from its legality, there's also the question of whether a mandatory scheme—especially one that gives developers smaller density bonuses and tax benefits, as Mr. Lander's report suggests—would place an undue burden on new construction. Some in the real estate industry say that it could shut down new development in neighborhoods that are more marginal and less lucrative to developers than Williamsburg and West Chelsea. The current density bonuses barely allow for any development beyond the affordable units, they point out, which are priced so low that developers lose money on them. ("Inclusionary tax abatements" might be a more accurate name for it, as those benefits are larger than the density bonuses.)

Mr. Lander's report recognizes that it would be difficult for small and medium-sized developers to participate in the program, but only suggests better outreach to developers and "focus groups [...] to identify changes" as solutions to easing the burden.

On the other hand, if the city did give away the same incentives while making inclusionary zoning mandatory for new development, it would essentially remove new residential construction from the tax rolls.

The city's politicians, however, appear to be growing increasingly intolerant of the luxury-only new housing market, and inclusionary zoning hits all the right buttons—mixed-income development, public-private partnerships and off-budget incentives. There will be hurdles, of course, but mandatory inclusionary zoning feels like an idea whose day may have finally come.

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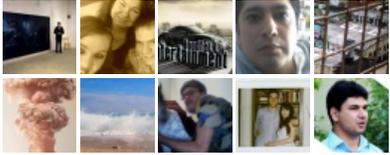
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