



# 3

## **Should the next mayor adopt a mandatory inclusionary zoning program that requires developers to build or preserve affordable housing whenever they build market-rate housing?**

Several of the mayoral candidates have proposed implementing a policy of mandatory inclusionary zoning as a way to increase the development or preservation of affordable housing units. Such a policy could help meet the housing needs of more of the city's poor and working class families.



## WHY IT MATTERS (CONT'D)

However, a mandatory inclusionary zoning policy could have other consequences, including higher density development in some neighborhoods if the city offsets the requirement with an upzoning, or higher prices for market-rate units if the policy increases the cost of development.

## THE BASICS

Zoning rules that require or encourage developers to produce affordable housing are commonly called “inclusionary zoning.” New York City adopted its first inclusionary zoning provisions in 1987, when it began allowing developers to exceed the maximum building size otherwise allowable in R10 districts (very high density zoning districts located primarily in Manhattan) by up to 20 percent in exchange for providing affordable housing. More recently, the city expanded its Inclusionary Housing Program beyond R10 districts to Greenpoint/Williamsburg, Hudson Yards, West Chelsea, Downtown Jamaica, the Lower Concourse, and several other parts of the city, in many cases, as part of a city-led comprehensive rezoning. In most eligible areas, developers can obtain a zoning bonus by providing the affordable housing as part of the project itself or on a separate, nearby site. The amount of bonus density a developer can receive is based on the amount and type of affordable housing the developer provides, and varies across eligible areas. Figure 1 shows the parts of the city where the Inclusionary Housing Program applies.

The affordable units can be rental or, since 2009, offered for homeownership, but in most cases they must be affordable to (and inhabited by) low-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). According to 2013 guidelines, a two-person household earning up to \$55,040 and a four-person household earning up to \$68,720 are considered low-income. Additionally, even after the first occupants move out, rental units remain subject to New York’s rent stabilization rules (with the added requirement that rents remain

affordable under the HUD guidelines for the new tenants), and resale values of owned units are capped. Developers often use public subsidies, such as the Low Income Housing Tax Credit or 421-a tax exemption, to build the affordable units, though in some parts of the city where the Inclusionary Housing Program applies subsidized units earn the developer less of a density bonus. If a developer uses a subsidy program, affordable units must also meet that program’s requirements.

As of late spring 2013, developers had completed or broken ground on almost 4,500 units of affordable housing located in over 100 separate projects to obtain the zoning bonuses offered through the Inclusionary Housing Program. As Table 1 shows, most of these units are in Manhattan and almost all of the others are in Brooklyn.

Other cities, including Boston, Denver, Sacramento, and many suburban towns, have adopted mandatory inclusionary zoning policies. These policies typically require that new developments over a certain size reserve a share of new units for low- or moderate-income households. Some jurisdictions allow developers to satisfy the requirements off-site or to make a cash contribution to an affordable

**TABLE 1: Affordable Housing Produced under the Inclusionary Housing Program, 1988 to 2013**

	<i>Projects</i>	<i>Affordable Units</i>
Bronx	2	40
Brooklyn	22	1,112
Manhattan	77	3,286
Queens	2	33
<b>Total</b>	<b>103</b>	<b>4,471</b>

*Source: New York City Department of Housing Preservation and Development*



housing fund instead of providing affordable units. Developers in places with mandatory programs have no alternative but to fulfill the requirement.<sup>1</sup>

## QUESTIONS & CONSIDERATIONS

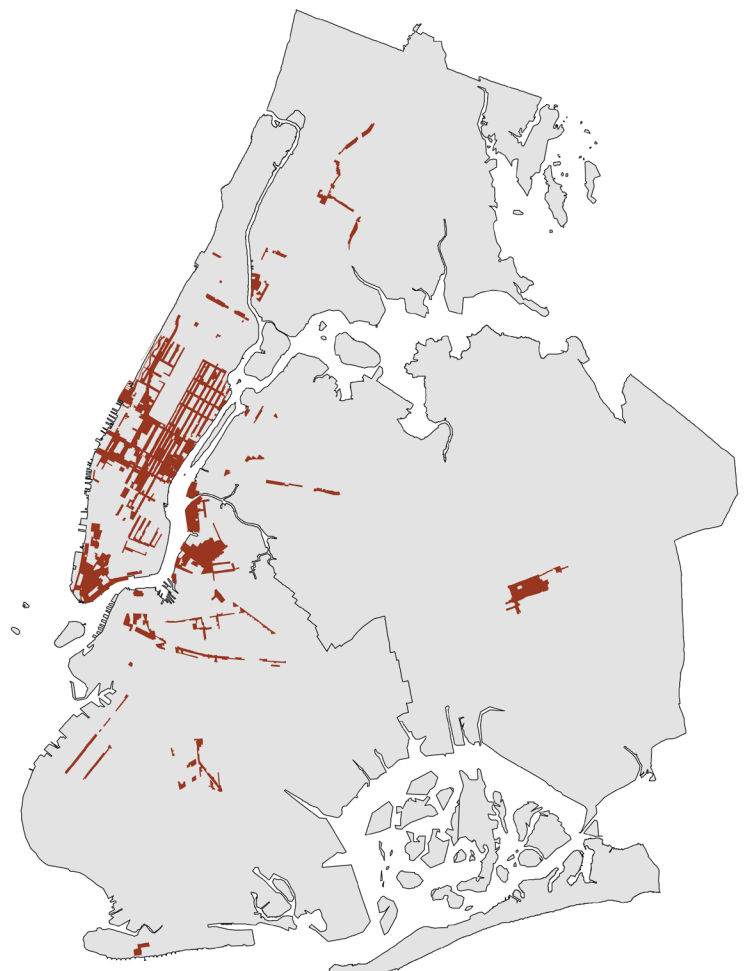
Should the next mayoral administration implement a policy of mandatory inclusionary zoning, it could have potentially significant impacts on the production not only of affordable housing, but also on the rest of New York City's housing market.

How much additional affordable housing a mandatory inclusionary zoning program produces will depend on how much new development occurs in the area where the program applies. If developers find it profitable to build in areas subject to the program despite the requirement, adopting a mandatory program in New York City could lead developers to produce more affordable housing than they would under the current, voluntary program. This is particularly likely if the areas where the program applies are simultaneously upzoned to allow developers to make up the cost of compliance through greater development density. Accordingly, mandatory inclusionary zoning could encourage developers to meet more of the demand for affordable housing among low-income households without additional direct subsidy from the government.

On the other hand, if developers find that the costs of a mandatory inclusionary zoning program often render potential projects less profitable or completely unprofitable, the program could slow

the development of market-rate housing while providing little new affordable housing. Under the current, voluntary program, when a developer elects not to participate, it may be because the bonus density is not sufficient to offset the cost of providing the affordable housing needed to obtain the bonus, or because the developer believes the demand for development on a given site can be met without the bonus density. Imposing a mandatory program in these cases (particularly if no additional density is allowed) may mean

**FIGURE 1: Areas Eligible for the Existing Inclusionary Zoning Program as of July 2013**



Source: New York City Department of City Planning, Furman Center

<sup>1</sup> For more information about the array of mandatory programs in effect around the country, see Scheutz, J., Meltzer, R., & Been, V. (2009). 31 Flavors of Inclusionary Zoning: Comparing Policies From San Francisco, Washington, DC, and Suburban Boston. *Journal of the American Planning Association*, 75(4), 441-456.



the development would not be built at all. In other cases, a developer may proceed with her project, incurring the added development costs resulting from a mandatory policy, but try to pass the added costs on to market-rate tenants and buyers if the market allows it.<sup>2</sup>

Predicting which of these outcomes would occur is difficult and past research has not provided a clear answer, but there is broad consensus among economists that requirements that make housing development more expensive are likely to result in less of it, which would add further pressure to New York City's market-rate housing market. The next mayoral administration should carefully consider whether to provide a density bonus above and beyond current allowable density as a part of any mandatory inclusionary bonus. The size of that bonus will help determine the amount not only of affordable housing generated, but market-rate housing too.

Increased density can be controversial in neighborhoods where the policy is implemented if a mandatory inclusionary zoning policy does include additional density to offset the cost of providing affordable housing. Current residents may not welcome the resulting density, either for aesthetic reasons or because of the anticipated strain on public services, such as subways and schools. On the other

---

2 Alternatively, a mandatory program could have the effect of driving down land prices as developers seek to offset the added cost of development by offering less for development sites.

hand, given the lack of land for development in New York City, additional density may be the only way to increase the supply of housing and lower rents across the board.

The amount of flexibility the mandatory inclusionary policy gives to developers in terms of the location of the affordable housing will also determine the level of private sector participation and the amount of affordable housing generated. In research focusing on other jurisdictions, the Furman Center found that program flexibility is associated with higher levels of affordable housing production.<sup>3</sup>

Candidates should be specific about any policies they propose, making clear, for example, whether the affordable housing requirement must be satisfied on-site, or if developers would instead be allowed to provide off-site units or pay into a development fund. Specifics about the length of time the affordable units would have to remain affordable are also important. Similarly, candidates should specify whether they plan to allow developers to build at an increased density on sites subject to mandatory inclusionary zoning.<sup>4</sup>

---

3 Furman Center for Real Estate and Urban Policy. (2008). *The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas*. Retrieved <http://furman-center.org/files/publications/IZPolicyBrief.pdf>

4 Importantly, how a mandatory inclusionary zoning program is structured may also have implications for its ability to withstand constitutional and other legal challenges.