

After two years of community planning and outreach by the Department of City Planning and the Department of Housing Preservation and Development (HPD) and several months of robust public review, on March 22, the New York City Council approved the most significant amendments to the New York City Zoning Resolution in more than a generation. Mandatory Inclusionary Housing (MIH) will require the development of affordable housing in newly upzoned areas. Zoning for Quality and Affordability (ZQA) increases building heights to accommodate the MIH affordable housing and allow greater flexibility in the design of housing while still maintaining neighborhood context. The two proposals are intended to work together to create as much as 80,000 units of new affordable housing, as well as more housing for seniors.

### **Voluntary Inclusionary Housing (IH)**

Since 1987, affordable housing was provided voluntarily in exchange for bonus floor area. Initially available only in the highest density zoning district with a floor area ratio (FAR) of 10, the IH program allowed a 20% bonus in exchange for providing affordable housing in accordance with the IH program requirements. The bonus generally ranged from 2 – 4 sq. ft. for each square foot of affordable housing provided.

In 2005, the IH program was expanded to apply in designated high and medium density zoning districts, such as Greenpoint-Williamsburg in Brooklyn. In the IH designated areas, a greater amount of affordable housing is generally required to earn the IH floor area bonus, which is generally earned at the rate of 1.25 sq. ft. for each square foot of affordable housing. Generally, the affordable housing developed under the IH program is targeted to lower-income households at or below 80% of Area Median Income (AMI), or, in certain areas such as Greenpoint-Williamsburg, to households at higher income levels, below 125% or 175% of AMI.

The IH program was amended in 2009 to allow IH affordable units to utilize a range of public subsidies and to create a home ownership option.

In all iterations of the IH program, the affordable housing could be provided on-site or off-site provided the off-site location was within the same community district or in an adjacent community district within ½ mile of the site utilizing the bonus floor area.

### **Mandatory Inclusionary Housing (MIH)**

The key difference between the IH and MIH programs is that under IH, a bonus was voluntarily earned on a property-by-property basis in exchange for the provision of affordable housing, whereas under MIH, the bonus is provided up-front in the form of an area-wide upzoning, pursuant to which every property in the rezoned area must provide affordable housing if and when it is developed.

Any property or area that is rezoned to “facilitate the development of a substantial amount of new housing,” whether by a public or a private application, will be mapped as an MIH designated area, within which affordable housing will be required, not optional. It is important to note that the MIH program will not apply in IH designated areas, only in the MIH designated areas; the provision of affordable housing will continue to be voluntary in the IH designated areas.

With MIH designated areas, the MIH program will apply to developments, enlargements or conversions that have more than 10 dwelling units or 12,500 sq. ft. of residential floor area. However, for developments, enlargements or conversions that have 25 or fewer dwelling units or 25,000 sq. ft. or less of residential floor area, the affordable housing requirement may be satisfied by making a contribution to the Affordable Housing Fund that is “related to the cost of constructing an equivalent amount of affordable floor area” as shall be set forth in the MIH guidelines to be developed by HPD.

Within an MIH designated area, one of three options may apply:

- Option 1: 25% of the residential floor area shall be affordable to families earning an average of 60% of AMI, of which 10% shall be affordable to families earning 40% of AMI.
- Option 2: 30% of the residential floor area shall be affordable to families earning an average of 80% of AMI.
- Workforce Option: 30% of the residential floor area shall be affordable to families earning an average of 115% of AMI, of which 5% must be affordable to families earning 90% of AMI and another 5% must be affordable to families earning 70% of AMI.
- Deep Affordability Option: 20% of the residential floor area shall be affordable to families earning 40% of AMI (applicable only in conjunction with Option 1 and/or Option 2 and with no public subsidy).

Which options will apply in any given MIH designated area will be determined by City Planning and the City Council in conjunction with and at the time of an area rezoning. One or more options may apply in any designated area. To date, no MIH designated areas have been mapped although the administration has identified eight neighborhoods for study and possible rezoning/MIH area mapping. In East New York, which was approved by the City Planning Commission and is currently under review by the City Council, the MIH designated areas were designated for Option 1. The other seven neighborhoods are:

- Bay Street, Staten Island
- Flushing, Queens
- Long Island City, Queens
- Jerome Avenue, the Bronx
- East Harlem, Manhattan
- Inwood, Manhattan

MIH will also apply outside of MIH designated areas where a development, enlargement or conversion is subject to a special permit that allows “a significant increase in residential floor area.” In such cases, City Planning “shall apply” such provisions of the MIH program it finds “are consistent with the objectives” of the program. MIH will not, however, apply to special permits that increase floor area in exchange for the provision of “significant public infrastructure or public facilities.” MIH will also not apply to special permits that permit the transfer of development rights, such as §74-79 transfers of development rights from landmark sites. That is because such special permits do not create new floor area; they only allow the redistribution of existing floor area.

Modifications or waivers of the MIH program requirements may be obtained by special permit from the Board of Standards and Appeals (BSA), provided the BSA finds that the MIH requirements create an unnecessary hardship such that strict compliance with MIH will not bring a reasonable return. HPD will play a significant role in the BSA special permit process, being required to submit written comment and/or appear before the BSA, and to consult with BSA in its determination. Such special permits shall lapse after four years but may be renewed “as appropriate” by the BSA, also upon consultation with HPD.

Where MIH affordable housing is provided off-site, the required affordable housing floor area shall be increased by 5% - e.g., if any amount of Option 2 affordable housing is provided off-site, the required amount of affordable floor area is increased from 30% to 35%. Also, off-site affordable housing may not utilize the increased height limits of ZQA described below. These requirements were made by the City Council to “disincentivize” the development of off-site affordable housing and ensure the integration of the affordable housing with the market rate housing.

The complete MIH zoning text amendment, as approved by the City Council, is available here: <http://labs.council.nyc/land-use/mih-zqa/resources/ZQA-text-Council-Modifications.pdf>.

### **Zoning for Quality and Affordability (ZQA)**

The purpose of ZQA is to liberalize certain zoning requirements applicable within contextual zoning districts and to Quality Housing buildings to accommodate the additional floor area resulting from MIH upzonings and area designations, allow greater flexibility of design in both market rate and affordable housing, and to encourage the development of both market rate and affordable senior housing. The key provisions of ZQA are as follows:

- **Height Increases**

In contextual zoning districts, the strict street wall and building height limitations have been modified to allow, generally, an additional five feet in height where a minimum 13-foot high ground floor is provided with commercial or community facility use. Such increase is not

available to market rate buildings in the Manhattan Core (Manhattan generally below West 110th and East 96th Street).

For developments containing inclusionary housing (either IH or MIH) or affordable senior housing, even greater increases in building height (and maximum street wall height) are allowed. Where at least 50% of the development is residential floor area, of which at least 20% is affordable, the maximum building height may be increased by 15 ft. (in medium density R6 districts) up to 30 ft. (in the high density R9 and R10 districts).

- Parking

Parking requirements for market rate and affordable housing, including affordable senior housing, are reduced for developments within designated Transit Zones (fairly widespread areas of upper Manhattan, the Bronx, Brooklyn and Queens), within which parking is optional for affordable housing developments. Outside the Transit Zones, the parking requirement may be reduced by special permit for developments containing at least 20% affordable housing.

Provisions of ZQA approved by the City Planning Commission to modify the “sliver law” to allow taller affordable housing buildings on lots less than 45 ft. wide and to reduce the minimum distance between buildings on the same zoning lot were removed by the City Council.

The complete ZQA zoning text amendment, as approved by the City Council, is available here: <http://labs.council.nyc/land-use/mih-zqa/resources/ZQA-text-Council-Modifications.pdf>.

For additional information or questions regarding MIH, ZQA or the voluntary IH program, please contact:

Frank E. Chaney  
Of Counsel  
(212) 551-1279  
[fchaney@rosenbergestis.com](mailto:fchaney@rosenbergestis.com)