

NYC'S MANDATORY INCLUSIONARY HOUSING POLICY CAUSES UNCERTAINTY AND HESITATION AMONG DEVELOPERS

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Last year, NYC Mayor Bill de Blasio proposed, and the city council approved, a mandatory inclusionary housing policy for new construction projects on sites that have been upzoned or use a special permit to increase floor area. Under the program, developers can construct taller and denser residential buildings but must provide up to 30% of the floor area as affordable housing.

Mandatory inclusionary housing represents a significant step in the mayor's plan to increase neighborhood economic diversity. It is also controversial.

Local council members have become major roadblocks to construction. In August 2016, Inwood council member Ydanis Rodriguez opposed a 355-unit residential building with 178 affordable units. A month later, Phipps Houses backed down on plans to build a 209-unit building in Sunnyside, Queens, after failing to receive approval from council member Jimmy Van Bramer. In both cases, they disapproved of the development's planned height. "Everybody likes the idea of affordable housing, but when it comes down to specific buildings in a specific neighborhood, it seems to be turning out to be a much harder sell," Frank Chaney, a land use attorney, said.

Developers have since hesitated to proceed with construction plans, concerned with potential community backlash — and stringent regulations.



Chaney, who is with Rosenberg & Estis, a New York-based law firm with over 41 years of real estate experience, said his clients are hesitant to upzone or apply for special permits that would trigger the requirement for mandatory inclusionary housing. "There have only been a couple of private applications to rezone and make use of the MIH program," Chaney said. Major developers have opted instead to not go forward with rezoning. Silverstein properties,

originally complying with the new policy, recently revised its West Side construction plans, opting for the existing zoning of a 600k SF of residential space. This new plan replaces a previous rezoning effort that would have increased the property floor area to accommodate 30% affordable housing.

The hesitancy to go forward with MIH rezoning also comes in the wake of a subsidy hole left

by the expiration of the 421-a statute, the property tax break for new multi-unit residential developments that expired in January 2016. Elise Kessler, who joined Rosenberg & Estis in 2016 and is part of the firm's affordable housing team, said that developers are holding out for the 421-a replacement program. Dubbed Affordable New York Housing, the proposed plan would allow a longer tax exemption period in exchange for increased affordability. "There are developers who want to develop, are willing to go through the MIH program, but they are taking a backseat to see what happens with the new 421-a," Kessler said.

The city is ahead of schedule to hit its goal of 80,000 new affordable units — de Blasio told the New York Times that 53,000 affordable apartments were created or preserved in 2016 — but the recent growth might be a result of leftover projects from the former tax break, rather than MIH. "There was an 'Oklahoma Land Rush' of applications filed under the old 421-a program before it expired, so much so that it created a reservoir of projects," Chaney said. "We are still seeing projects going forward based on applications that were submitted and approved prior to the old regulations expiring." When that reservoir runs dry, growth in the affordable housing supply might slow.



New developments in New York are limited by geography and construction costs, making partnerships between city officials and private developers essential. That relationship can often be contentious. "The city gives a bonus to encourage whatever it wants to encourage — affordable housing, plazas, food stores, landmark preservation — but then puts in place so many restrictions and requirements that developers and property owners tend not to want to get involved," Chaney said. "There has to be a balance struck between having enough regulation to make sure the city gets the benefit that it is bargaining for, but not so much that it discourages people from actually making use of the program."

Property developers for the most part have decided to dig in their heels and wait. For those willing to take advantage of inclusionary housing policy and comply with its strict guidelines, the path to breaking ground remains uncertain and time-consuming. Firms like Rosenberg & Estis, necessary guides for navigating the complex web of requirements, will be the first they call.

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