REPORT BY THE COMMITTEE ON HOUSING AND URBAN DEVELOPMENT

THE MAPPING OF MANDATORY INCLUSIONARY HOUSING (MIH) 
AND THE EAST HARLEM REZONING

The New York City Bar Association (“City Bar”), through the Committee on Housing & Urban Development (the “HUD Committee”), is writing to express its support of the East Harlem Rezoning Proposal and more generally of rezoning initiatives to increase residential density and to map mandatory inclusionary housing areas.

The City Bar urges the City Council to increase residential density in East Harlem and throughout the City’s lower density areas because it will combat the housing crisis in two effective ways. First, it will create critically needed housing that is permanently affordable, some of which will be built and owned by not-for-profit affordable housing developers. Second, the rezoning and other proposals like it will increase the supply of housing stock, which will, in the long-term, help to alleviate the housing crisis facing the City.

BACKGROUND

In early 2014, Mayor de Blasio announced a plan to build or preserve 200,000 new units of affordable housing throughout the City.\(^1\) The plan identified East Harlem as a neighborhood where a rezoning would provide substantial opportunities for growth.\(^2\) Over the next few years, the community developed a holistic neighborhood plan that identified their goals for the rezoning,\(^3\) and this plan was presented to City agencies in February 2017.\(^4\) Shortly afterward, the City Planning Commission began the public review process, and on October 2, 2017, the City

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Planning Commission approved the East Harlem Rezoning Proposal (the “Proposal”). The City Council is expected to vote on the Proposal on November 15, 2017.

The Proposal aims to create 4,100 units of permanent affordable housing in East Harlem. It will do so by requiring private residential construction to include affordable units pursuant to Mandatory Inclusionary Housing (“MIH”). The Proposal also includes a number of City-owned sites on which the City intends to develop affordable housing. Besides the creation of affordable housing, the Proposal aims to preserve existing neighborhood character, create opportunities for economic development, improve access to transportation, and establish urban design controls.

COMMUNITY OPPOSITION TO UP ZONINGS

Community groups have criticized the Proposal and similar rezonings, arguing that it fails to address the housing needs of the average East Harlem resident and that the additional market-rate housing will lead to the displacement of local residents.

Of the 4,100 units of affordable housing the Proposal is projected to create, 2,600 units will be on publicly owned land and the other 1,500 units on private sites through the implementation of MIH. 520 of the total affordable units will be set aside for residents making 30% of the Area Median Income (“AMI”). Community groups approximate that the average East Harlem resident earns 30% of AMI and, therefore, are advocating for a greater share of affordable units at lower AMIs.

More generally, community groups are concerned that rezonings, which increase residential density and the stock of market-rate housing, accelerate gentrification, which in turn is associated with increased displacement pressures. The rezonings in Williamsburg and Bedford-Stuyvesant are often identified as examples of increasing rents, gentrification, and perceived displacement that up zonings can cause. Based on this concern, community groups are demanding that higher percentages of units in developments be set aside for affordable housing and increasingly opposing the up zonings that allow the mapping of MIH, such as the proposed East Harlem rezoning. Although the impact of rezonings on local residents must be recognized


9 The plan does not specify income bands for the remaining 3,580 affordable units.

and adequately addressed, the growing opposition to new development is concerning, as it will exacerbate the present affordable housing crisis.

**OPPOSING REZONINGS WILL NOT ABATE GENTRIFICATION**

Whether market forces, policies, or a combination of these factors are the root cause of gentrification, the census data establishes that East Harlem has been gentrifying over the past decade, and there is no evidence that this trend will stop if the rezoning is rejected by the City Council. From 2000 to 2014, the population in East Harlem increased by 10%—from 115,433 to 122,434. Over this same period, rents in East Harlem increased 40%, and in 2015, the rental vacancy rate was just 3.1%. These trends are not limited to East Harlem, but they are particularly pronounced. Citywide the population has increased by approximately 4.4% from 2010 to 2016, which represents an additional 400,000 people to house. The City’s population is projected to grow by another 500,000 individuals by 2040, and this population growth has been accompanied by an increasing demand for rental housing by higher-income households. As a result, the demand for housing is only projected to further increase.

To keep up with this projected increase in demand, it is expected that 20,000 new units of housing will be needed each year. In 2017, approximately 24,000 new residential units will be built and 22,000 new units are expected in 2018. Although the yearly targets for new residential units have been met the past two years, this rate of construction must be maintained every year going forward just to keep pace with the City’s population growth. It is also important to remember that, of the 200,000 units the City’s affordable housing plan intends to generate, only 40% are new units and that this plan alone will not generate enough housing to meet the demand.

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15 *Id.*
19 *Id.*
20 The Administration recently increased the goal to build or preserve 300,000 affordable units. *See NYC Mayor’s Office, Mayor de Blasio Announces New Program to Save City’s Remaining Affordable Mitchell-Lama*
Besides these demographic pressures, State law restricts the amount of residential space a property may have regardless of a neighborhood’s capacity to support additional housing—in spite of the fact that no such cap exists for commercial development.\textsuperscript{21} This artificial cap effectively pushes the housing demand out of the core of Manhattan—below 96th Street on the East Side—to all the neighborhoods in the City.

Furthermore, regardless of whether an area is up zoned, property owners cannot be prevented from constructing luxury apartments that are well beyond the means of existing residents, provided that the building complies with current zoning laws. Under the revised 421-a program, developers can also seek tax abatements in exchange for providing affordable housing up to 130% AMI. These affordability levels are significantly higher than those in the proposed MIH areas of 60% and 80% AMI. More generally, studies have shown that caps on development, restrictive zoning limits on allowable densities, and urban growth boundaries are all correlated with increased housing prices.\textsuperscript{22}

It is, therefore, critical to understand that preventing new residential development will not stop the gentrification pressures acutely felt in East Harlem and other areas of the City; in fact, preventing new residential developments will heighten these pressures by constraining the supply of housing even further.

THE FEASIBILITY OF CONSTRUCTING 100% AFFORDABLE BUILDINGS

Constructing affordable housing is expensive, and available public funding is limited. The City extensively analyzed the financial feasibility of constructing affordable housing when it enacted MIH. This study estimated that building a 900 sq.ft. two-bedroom affordable apartment in a high-rise building costs approximately $350,000, excluding land costs.\textsuperscript{23} The study further analyzed the financial feasibility of requiring developers to set aside units at various affordability levels, i.e. AMI levels, and with different amounts of public subsidy. Due to the high cost of building housing in the City, the study found that, in the vast majority of neighborhoods, it was not financially feasible, without some level of public subsidy, to require private developers to provide affordable units—even when the required set aside is lowered to 20% of a project’s units and the affordability level is increased to 90% AMI.

There is a fundamental trade-off between the amount and level of affordable housing the City can require and the amount of public subsidy required to make a project financially feasible. For example, in response to concerns by community groups that the AMI levels in the City’s housing plan were too high, the Administration recently pledged to make an additional 10,000

\textsuperscript{21} Multiple Dwelling Law, §26(3).
units affordable to extremely-low and very-low income families (households of three respectively earning less than $25,000 a year—30% AMI—and $41,000 a year—50% AMI). This is projected to cost an additional $2 billion or $200,000 per unit.24

Given the cost of providing affordable housing at low AMIs, there are simply not sufficient public resources to create all of the needed housing. To make matters worse, Congress has just proposed repealing tax-exempt bonds, which the City relies on extensively to subsidize affordable housing, and is pursuing tax measures that will devalue tax credits, which have been a primary source of funding to build low-income housing.25 This means that the City has to leverage private residential development in order to generate affordable units that require either no or smaller amounts of public subsidy. The more affordable units that can be generated through private development, the more subsidies will be available to create affordable units at lower AMI levels. So, though set asides are an important tool to offset the displacement pressures that new development may create, the self-funding of these required set asides is imperative to generate the needed amount of affordable housing.

SOCIAL BENEFITS OF MIXED-INCOME BUILDINGS AND NEIGHBORHOOD INVESTMENTS

Setting aside the fact that the City does not have the resources to subsidize all of the needed affordable housing, mixed-income buildings that contain both affordable and market-rate housing provide clear social benefits. Studies indicate that children in households that move from high-poverty to lower-poverty neighborhoods have higher college attendance rates, increased earnings, and fewer health problems.26 Moreover, the studies establish that living in a lower-poverty neighborhood substantially improves both the physical and mental health of adults.27 As such, mixed-income buildings have distinct advantages. That said, it is equally well-recognized that a neighborhood must have services and retail affordable to all households to be truly inclusive.

To ensure that up zoned neighborhoods cater to more than just the housing needs of residents, the City is investing heavily in the neighborhoods it is rezoning. As seen with the recent East New York rezoning, the City is investing $267 million in the neighborhood and will build a new public school, renovate local parks, support local businesses, as well as create

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The City is similarly pledging to invest in needed services and capital projects in East Harlem. In addition to these direct investments, the City has pursued tenant-protection initiatives, such as funding legal services and pursuing more robust enforcement measures.

In conclusion, the solution to abating the affordable housing crisis that is affecting millions of New Yorkers is not to stop development. To the contrary, the City must leverage private development to effectively address this crisis. This is precisely what the East Harlem rezoning seeks to achieve, and the City Bar urges the City Council to approve the Proposal and similar rezonings that will create urgently needed affordable housing.

Housing and Urban Development Committee
Daniel Weisz, Co-Chair

November 2017

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