

**Testimony of Vicki Been, Commissioner of the
Department of Housing Preservation and Development
City Council Subcommittee on Zoning and Franchises
Hearing
on the
Mandatory Inclusionary Program
February 9, 2016**

Good morning, Chair Richards and members of the City Council. For the record, I am Vicki Been, Commissioner of the Department of Housing Preservation and Development. The proposed Mandatory Inclusionary Housing program, which I will refer to as MIH, is about creating lasting affordability to ensure the diversity and inclusivity of our neighborhoods. MIH would require that developers provide permanently affordable housing in new developments built in areas rezoned for residential growth. This bold policy, the most rigorous of any city in the nation, will mandate permanently affordable homes in neighborhoods for the first time. And by securing affordable housing from builders, MIH will allow the City to devote its subsidies to finance affordable housing that the private market can't provide – housing aimed at the lowest income families.

MANDATORY VS VOLUNTARY SLIDE

Today, the City does not require developers to provide any affordable housing unless they **choose** to do so. Through the voluntary inclusionary program, we allow builders to increase the height of the building if they provide affordable housing. The voluntary program has produced less than 9,000 units over several decades, far fewer than had been hoped for, despite efforts to improve the program over the years. Further, the units built have almost all been focused on families whose incomes are up to 80% of Area Median Income (\$62,150 annual household income for a family of three).

MIH is a new approach. It would *mandate* that developers supply permanently affordable housing in the City. Builders would be required to provide affordable housing whenever City Planning Commission actions – community-wide rezonings or private applications for single lots – encourage the development of substantial new housing. That new

housing would be *permanently* affordable. Because the benefits of a rezoning are lasting, we can achieve permanent affordability through ongoing cross-subsidy of affordable rents by the market rate units. This means that we will not have to put new City subsidies into the project every 30 years to keep the rents affordable. Further, the new housing would be aimed at a *broad range of incomes*. This will ensure that our neighborhoods retain the economic diversity which is so critical to the City's character and competitiveness.

SLIDE: OPTIONS

The proposal allows the City Council and the City Planning Commission to determine which of two basic income options would apply. These options specify the *minimum* the developer must provide as affordable housing. Let me reiterate—this is the baseline requirement – the floor. The City can, and will, use its subsidies to supplement that minimum, by paying for more affordable housing in the buildings, and by paying for those units to be available to families with lower incomes than the developer legally and practically can be asked to serve. The two options require the developer to provide either:

- 25% of the units to be affordable for families at an *average* of 60% AMI (\$46,620 for a family of three) **or**
- 30% of the units to be affordable at an *average* of 80% AMI (\$62,150 for a family of three).

It's important to understand that because these are *average* AMIs, units will be included

at AMIs lower than the 60% and 80% contained in these options. I will explain that more fully in a minute.

We have one additional option, the workforce option that the City Council may decide to apply in limited circumstances. This option would preclude the use of City subsidies. We know that market rate housing starts to get built when developers can charge rents of about \$2,300 for a two bedroom unit, which is affordable to families making around 120% of AMI, or around \$93,000 for a family of three. If developers are building in a neighborhood at that level without subsidies, and we require that 25 or 30% of the apartments be restricted to the lower rents the first two options require, they will stop building either market or affordable apartments unless we subsidize the affordable ones. The workforce option will allow the market to continue to build housing without subsidies, but at the same time “lock in” the affordability of some units for moderate income households. That way, if the market surges to much higher rents, we’ve secured some economic diversity by ensuring that moderate income families will be able to remain in the neighborhood because they have permanently affordable apartments. And we can use the subsidies we saved to secure other apartments for people with much lower incomes – families of three making just \$23,350, for example – to further ensure the diversity of the neighborhood.

Which of the two basic options would be appropriate for a particular neighborhood would be identified during the process for each specific rezoning, following the normal land use public review procedures. The basic option, and whether the workforce option would also be available to developers, would be subject to the approval of the City Council for each

neighborhood rezoning or private application.

SLIDE: HOW AVERAGING WORKS

Let me take a minute to explain the averaging process -- it is an important tool we have built into the proposed program, but it has generated some confusion. In practice, under each option, affordable units could be created across different income levels to meet the required average. For example, if option 1 (that 25% at 60% AMI option) is chosen for a specific rezoning, in a 100 unit building the requirement could be met by having:

- 25 units at 60% AMI (for a family of three earning \$46,000) **or**
- 10 units at 40% AMI (for a family of three earning \$31,080); 5 units at 60% AMI (for a family of three earning \$46,620) and 10 units at 80% AMI (for a family of three earning \$62,150).

Either scenario would fulfill the 25% at an average of 60% requirement.

This income mixing provides housing opportunities to families at a broader range of incomes, without affecting a building's operating income. Under all the options, units priced higher than 130% AMI cannot fulfill a development's MIH requirement. Averaging can be achieved in any number of ways – this is just one example.

Again, MIH is only one of the tools we will use to provide affordable housing and to reach families with different incomes. We will use city subsidies and rental assistance such as federal Section 8 vouchers to further reduce the rents so that families with even lower incomes can be housed.

SLIDE: CITY SUBSIDIES CAN HELP PROVIDE AFFORDABLE HOUSING FOR EVEN MORE FAMILIES

Many people have called for us to require developers to provide housing affordable to even lower incomes under MIH, arguing that the City then would not have to rely on subsidies to attain the affordability that many communities will need.

As Deputy Mayor Glen explained, providing housing for a range of extremely low, very low, low, and moderate income New Yorkers is the paramount goal of the Mayor's *Housing New York* plan. But MIH is only one part of that plan, and cannot be asked to do everything. An MIH program that is too onerous for developers will stop, rather than foster, the new housing we so desperately need. If our program makes development too expensive, nothing will get built -- investors will stop investing in housing and instead will put their money into higher yield, lower risk projects. Thus our good intentions will only hurt the people we want to help.

SLIDE: MIH MUST BE FINANCIALLY FEASIBLE, FLEXIBLE, AND CONSTITUTIONAL

An MIH program that pushes too far will stop housing production at a time when rents are increasing because we don't have enough housing. Stalled housing production would set the stage for **increased** displacement as rent pressures rise. Further, demanding too much from developers will place the program at risk of legal challenges; we would spend years litigating rather than seeing families moving into permanently affordable housing.

Again, we hear, understand, and sympathize with the call for greater affordability. And we look forward to working with the Council to address those calls within the legal constraints we face. But we shouldn't let the perfect be the enemy of the good – we need to craft a program that results in housing – housing that families can move into soon. If we impose restrictions that are not financially feasible, or that are so close to the line that they won't work except in the strongest markets, or in the best parts of the market cycle, we'll stop production, and we'll spend our time and money fighting in courts, rather than building badly needed housing. Our families and neighborhoods need affordable housing *now*, and MIH will establish a feasible, flexible, and defensible baseline requirement that developers provide that affordable housing.

SLIDE: COMPARISON TO OTHER JURISDICTIONS

Just how far we're pushing is best illustrated by comparing our proposal to what other major cities are doing. Our proposal would create the most rigorous inclusionary program of any city in the nation by adopting a citywide approach and requiring a higher percentage of affordable units to be created. San Francisco's existing program has a 12% onsite affordable housing requirement and a 20% off-site requirement, for example, while MIH would require at least 25% permanently affordable housing be built whether on- or off-site.

SLIDE: MIH – WHY NOW?

Because the 421-a program was recently suspended, some voices have questioned whether the MIH program will work. It can. Although MIH was designed assuming that

421-a would be in place, HPD has other tax exemption tools, such as 420-c and Article XI, that can be used as substitutes for 421-a in many projects. Further, the suspension of 421-a is likely to be temporary; it has been in place for 45 years and has lapsed before, but it has always been restored. We fully expect that pressure will build for some broad tax exemption for rental housing.

Until 421-a or a similar program is available, projects seeking tax exemptions in areas zoned with MIH will likely have to rely on HPD's other tax exemption programs. The terms of those programs will require that many of these projects serve families with lower incomes, and provide more affordability than MIH alone will require.

CLOSING REMARKS AND TRANSITION TO CW

SLIDE: COMBATING DISPLACEMENT

There is no denying that our neighborhoods are changing, rents are increasing, and many people are afraid they won't be able to stay in their neighborhoods. There is no silver bullet to prevent displacement, which is why we have a comprehensive, multi-pronged, citywide approach to ensure that rent increases won't force people out of the neighborhoods they love. MIH is a critical component of that approach, because it will help secure new, permanently affordable apartments across the City. It works alongside the many financing and subsidy programs we use to create new affordable housing for families at an even broader range of incomes. And it complements all the work we do to preserve the affordability of existing rent-restricted housing, and to use new tools, like our Green Housing Preservation Program, to bring more of our housing stock into

affordability agreements. At the end of the day, the best way to avoid displacement is to provide enough housing to meet the City's needs, to lock in the affordability of that housing, and to ensure that the housing serves the people who have made the neighborhood their home for years or even decades.

As the Deputy Mayor noted earlier, the City is deploying immediate and proactive measures to protect residents from landlords that engage in harassment to force people to leave apartments in which they have a right to remain. Already, the City has worked with tenant advocates and the State Assembly to strengthen rent regulations; increased funding for free legal services to tenants; joined forces with the State's Attorney General and Tenant Protection Unit to investigate and bring charges against landlords who harass tenants; and, with the help of this City Council, secured new laws prohibiting harassing buy-out offers.

MIH will shape the way our city grows for generations to come. It will ensure that new development protects the diversity of our city and neighborhoods, which is critical to making New York City the center of innovation, art, culture, fashion, food, technology, problem-solving, and so much else that we value. That diversity is what makes New York unique, and what we have to fight, at all costs, to preserve. By securing permanent affordable housing that serves a broad range of incomes, MIH will help people of all incomes, in every neighborhood, stay in this great city, and work together to make the city even better for all our residents.

Thank you for the opportunity to testify today.