



## Inclusionary Housing Text Amendment - Approved!

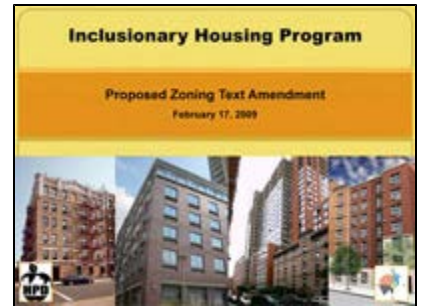
### Update July 29, 2009:

On July 29, 2009, the City Council adopted the Inclusionary Housing Text Amendment. The text changes are now in effect.

### Introduction

The Department of City Planning (DCP), in close cooperation with the Department of Housing Preservation and Development (HPD), is proposing a text amendment to the Inclusionary Housing provisions of the Zoning Resolution. This initiative will:

- Upgrade the Inclusionary Housing program to include a permanently affordable homeownership option;
- Increase the number of permanently affordable units that can be created and preserved under the original program, which applies in the highest-density residential districts, by extending provisions of the recently expanded (2005) program; and
- Make technical improvements to the program based on the experience of agencies, developers, and affordable housing groups



[View the slideshow presentation](#)

The proposal would not change the areas in which the Inclusionary Housing program applies, or the basic zoning mechanism and income formulas of the program.

### Background

The [Inclusionary Housing Program](#), part of New York City's zoning since 1987, was created to encourage economically integrated communities in areas experiencing new housing development. The program offers a floor area ratio (FAR) bonus for developments that provide affordable housing. To provide flexibility, address a range of needs and opportunities, and encourage broad participation in the Inclusionary Housing program, a range of options are permitted for the affordable housing: it may be located on-site or off-site, and may be provided through new construction, rehabilitation, or preservation of existing affordable housing. Units provided off-site are required to be located within the same Community District as the bonused development, or within a half-mile. All affordable units used to earn increased floor area must remain affordable for the life of the increased floor area. Unlike many other affordable housing programs, the income limitations for the affordable housing in the Inclusionary Housing Program are permanent.



The Caledonia, Chelsea

The Inclusionary Housing Program is being implemented by the Department of City Planning together with the Department of Housing Preservation and Development and is part of the Mayor's New Housing Marketplace Plan to build and preserve 165,000 units of affordable housing.



Palmer's Dock, Williamsburg

The two branches of the program – the R10 program, in place since 1987, and the expanded program, applied in certain rezonings since 2005 – have been successful in spurring the creation and preservation of affordable housing, with a total of over 3,200 units produced to date. The proposed text amendment would build upon the program's success to address certain limitations of the program, as well as technical and administrative issues identified by DCP, HPD, developers and affordable housing groups.

### R10 Program

The original Inclusionary Housing Program, part of New York City's zoning since 1987, was confined mainly to Manhattan's highest density districts, where it remains applicable today. In these districts, a floor area bonus of 20 percent is available to developments that provide affordable housing. Qualifying units must be affordable to households at or below 80 percent of

Area Median Income. For each square foot of affordable housing provided, between 2.0 and 4.0 square feet of bonus floor area are permitted, depending on whether the affordable units are provided through new construction, rehabilitation, or preservation. Housing subsidies are generally not allowed in the production of these affordable units, and these units may not carry debt. Since its establishment, approximately 1,500 units of affordable housing have been produced through this program.

#### *Expanded Program*

In 2005, the Inclusionary Housing Program was expanded to promote affordable housing in areas being rezoned to encourage housing development at medium and high densities. This expanded program allows the combination of a zoning floor area bonus with a variety of housing subsidy programs, creating a powerful incentive for the development and preservation of a higher proportion of affordable housing. Developments taking advantage of the full 33 percent bonus in the new program must devote at least 20 percent of their residential floor area to housing that will remain permanently affordable to lower-income households. Qualifying affordable units must be affordable to households at or below 80 percent of Area Median Income, with lower income levels reachable through combination with different subsidy programs. (In certain special districts, a portion of units may be targeted to higher incomes if a greater percentage of affordable units is provided.) Within three years of the first rezoning to introduce the expanded program, approximately 1,770 units of affordable housing have either been built or are in development.

#### **Proposed Text Amendment**

The proposed text amendment would create a permanently affordable homeownership option for the Inclusionary Housing program; apply to the R10 program of certain provisions created as part of the expanded program, including an option to use government subsidies in exchange for a greater proportion of affordable units; and make technical and procedural refinements to improve the administration of the Inclusionary Housing program.

#### *In All Areas Where the Inclusionary Housing Program Is Applicable*

The following modifications would affect all areas where the Inclusionary Housing program is currently applicable:

##### Homeownership Option

Currently, affordable units created through the program Inclusionary Housing program must be rental units. The proposed modifications would allow affordable units created through the Inclusionary Housing program to be either permanently affordable homeownership or rental units. In keeping with the Inclusionary Housing Program's guiding principle of permanent affordability, the resale price of homeownership units would be restricted for the life of the bonused development. This additional option would both facilitate the creation of a new permanently affordable housing resource within neighborhoods where the program applies, and encourage broader participation in the program from developers of condominiums and co-ops.

Inclusionary homeownership units would initially be affordable to households earning 80 percent of the HUD income limit. Over time, a fixed appreciation rate would enable the homeowner to realize a modest inflation-adjusted return. The restricted sale price of the unit would be allowed to increase, but such increases but would be capped so that the unit would always remain affordable to households earning no more than 125 percent of the HUD income limit.

##### Administering Agent Responsibilities

The proposed text would clarify that the administering agent, required as part of the affordable housing plan, is responsible for the rental of affordable units and annual income compliance, but not for building management, which is the responsibility of the owner.

##### Rent Restrictions

The proposed text would update restrictions on lower income rental units created through the Inclusionary Housing program to more closely correspond with other HPD standards. Today, the provisions regulating rents cap tenant rent payments at 30% of income, which has the undesirable effect of limiting eligible households to a narrow band of incomes. Under the proposal, rents would be set at up to 30% of the applicable HUD income limit, but allowable tenant income would be broadened to match wider HPD program standards and increase the range of low income households eligible for affordable units. In addition, the language describing rent caps and allowable rent increases would be clarified.

##### Unit Size and Distribution Requirements

Currently, affordable units located on-site under the Inclusionary Housing program are subject to certain requirements for unit size. However, these unit sizes do not correspond with the Housing Development Corporation unit size standards used in most affordable housing programs. The proposed text would replace the existing Inclusionary Housing unit size requirements with HDC standards, to prevent conflicts. The proposal would also encourage a mix of unit sizes that includes family-sized units by requiring that either (a) the affordable units have the same bedroom mix as the mix of the other residential units in the development, or (b) at least half of the affordable housing units have two or more bedrooms, with no more than 25 percent of the affordable units smaller than one bedroom. These distribution requirements would apply to all affordable units qualifying for the Inclusionary Housing program, though

the requirements could be waived if a financing program requires different size and bedroom mixes.

Currently, affordable units located on site under the Inclusionary Housing program are subject to unit distribution requirements, under which no more than two affordable units may be placed on a floor until 80 percent of all floors have at least one affordable unit. The original unit distribution requirements were designed for a program in which a smaller proportion (4 to 5 percent) of units was subject to the affordable housing regulations of the Inclusionary Housing program. The proposed text would adapt these requirements to higher proportions of affordable units in a variety of mixed-income buildings. The proposed text would require no more than 33 percent of the units on any floor to be affordable units unless 65 percent of the residential floors have at least one unit of affordable housing. The proposed distribution requirements would apply to all mixed-income buildings containing affordable units under the Inclusionary Housing program, regardless of whether or not the floor area bonus generated by these units is used on site.

#### Issuance of Certificates of Occupancy

Under existing provisions, no temporary or permanent Certificate of Occupancy may be issued for a development utilizing floor area from the Inclusionary Housing bonus until a corresponding Certificate of Occupancy has been issued for all the affordable units generating such bonus. This has resulted in confusion for mixed-income buildings, where affordable and market-rate units are interspersed and are completed concurrently, rather than sequentially. The proposed text would modify these restrictions to accommodate the "rolling" (floor-by-floor) issuance of COs and development of the non-bonus portion of the building, while maintaining assurances that affordable units will be completed, and bringing these provisions into closer correspondence with practice for other floor area bonuses.

#### Terminology and Organization

The proposed text would also revise the terminology and organization of the zoning text in order to clarify the regulations and facilitate implementation of the Inclusionary Housing program. Definitions and language describing administrative requirements and procedures would be clarified to facilitate HPD's administration of the program and to make the program requirements more easily understood by developers and communities.

#### *In R10 Districts*

The following modifications would apply only to R10 and equivalent districts where the Inclusionary Housing program is applicable, not including Inclusionary Housing Designated areas:

#### Government-Subsidized Option

Currently, the R10 Inclusionary Housing program does not allow affordable units to utilize most subsidies. The proposed text would allow Inclusionary Housing developments to use a range of public subsidies, while maintaining a privately subsidized option. The government-subsidized option would allow the same bonus ratio as available in Inclusionary Housing designated areas: 1.25 square feet of floor area bonus for each square foot of affordable housing. This additional option is expected to broaden participation in the Inclusionary Housing program, and result in a greater number of units that will remain permanently affordable under the program.

#### Bonus Ratio Adjustments

The R10 program currently contains different bonus ratios depending on whether units are provided through new construction, substantial rehabilitation, or preservation, and whether they are located on- or off-site. The proposed text would establish three bonus ratios for the R10 Inclusionary Housing program: new construction or substantial rehabilitation (3.5), preservation (2.0), and government-subsidized (1.25, as described above). This modification simplifies the many bonus ratios that exist in the current text, and clarifies the distinctions among the three options. The proposed unsubsidized new construction bonus ratio would, according to an analysis by HPD, be sufficient to provide an economic incentive to utilize the program under the proposed regulations, including relaxing restrictions on permanent debt (see below). The bonus ratio for preservation is unchanged from the existing text.

#### Restrictions on Permanent Debt



Currently, the zoning text does not permit affordable units to carry permanent private debt. The proposed text would allow affordable units created through the R10 Inclusionary Housing program to carry permanent private debt, within guidelines to be established by HPD, to better facilitate the financing and development of affordable units. This is a provision that already applies in Inclusionary Housing designated areas.

#### Preservation Eligibility

The proposed text would modify the income verification requirements of the preservation option in the R10 Inclusionary Housing program. The existing R10 program provisions require every household in a building to income-qualify in order for the building to be eligible for the preservation option. This severely limits the number of buildings that can be preserved under the program. Under the proposal, eligible buildings would need to have an average rent roll affordable to households at or below 80% of HUD's area median income. Existing tenants would be "grandfathered," while new tenants would be required to income-qualify. This would make the R10 program's preservation requirements consistent with the requirements in new Inclusionary Housing designated areas, and expand the universe of affordable units eligible for preservation through the Inclusionary Housing program.

 [View the proposed text amendment.](#)

### Public Review

On February 17, 2009, the City Planning Commission referred the proposed text amendment (N 090316 ZRY) to affected community boards, borough boards, and borough presidents for review and comment. Comments were to be submitted by April 27, 2009. The City Planning Commission held a public hearing on the proposal on May 20, 2009, and on June 17, 2009, voted to approve the text amendment with modifications. \* ( [Read the CPC Report.](#)) On July 29, 2009, the City Council adopted the Inclusionary Housing Text Amendment. The text changes are now in effect.  [View the adopted text amendment.](#)

#### \* CPC Modifications


In response to issues raised during public review, the Commission approved the zoning text amendment with the following modifications:

- The maximum annual appreciation rate for homeownership units would be capped at the rate of inflation (as defined by the Consumer Price Index) plus one percent, but never to be less than one percent. This would apply a formula that better addresses a variety of potential future economic conditions, while maintaining the balance between equity appreciation and permanent affordability.
  
- Several modifications clarify and make small adjustments to provisions within the referred text:
  - Clarifying that the proposed text amendment would not change the existing requirement that affordable units provided as cure under the anti-harassment provisions of the Special Clinton District, Special Hudson Yards District, and Special West Chelsea District be provided without public subsidy, and cannot be homeownership units;
  - Clarifying how requirements for the distribution of affordable units within a building apply when there are floors with three or fewer units;
  - Modifying the references to federal standards to reflect recent changes in the way HUD defines income limits, to remain consistent with past practices;
  - Adding flexibility to the definition of "eligible buyers" of affordable homeownership units, in order to allow preferential prices or other arrangements that may be made to accommodate existing tenants on the sites of affordable developments, while maintaining the maximum income levels permitted under the Inclusionary Housing program;
  - Clarifying the parameters for eligible buyers in the case of succession (when an apartment is passed on to a family member)
  - Updating the text to reflect Inclusionary Housing designated areas that have been adopted since February 17, 2009, and making other minor clarifications to the text.

For more information about the proposal, contact the Strategic Planning Division of the Department of City Planning at 212-720-3258.

## Related Notes

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-  Items accompanied by this symbol require the [free Adobe Acrobat Reader](#).