

# INCLUSIONARY ZONING'S BIG MOMENT

Cities across the country are forcing developers to build affordable housing. Could New York soon join them?

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Photo Illustrations  
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## **It's already gone further than anyone thought it would.**

When the Bloomberg administration started talking about remaking the Greenpoint and Williamsburg waterfront into a blossoming residential district, local community groups pleaded for something in return: new affordable housing for an area in desperate need of it.

Specifically, they wanted “inclusionary zoning”—a binding commitment that a substantial portion of the new construction would be within the financial means of the neighborhood’s longtime residents. (Median income for renters: about \$27,000.)

No way, said Deputy Mayor Dan Doctoroff and the agencies he oversees. When it

released its ambitious redevelopment plans in the summer of 2003, the Department of City Planning remained staunchly opposed to any new measures—even optional incentives—that would ask real estate developers to build affordable housing. Its goal was to maximize the amount of private investment that would flow to build new first-class high-rises and a

waterfront esplanade. Period.

What a difference a year, a new city housing commissioner and a well-organized phalanx of community advocates makes. This fall, City Planning and the Department of Housing Preservation and Development announced two new inclusionary zoning efforts—one for the northwest Brooklyn riverfront and one for Manhattan's Far West Side. Both would reward developers who include a certain number of apartments at reduced prices with the chance to build taller—and therefore more lucrative—buildings. The commitment is a breakthrough, putting New York among the hundreds of cities nationwide that have adopted substantial inclusionary zoning programs.

But it's not over yet. The zoning changes still have to be approved by the City Council, and Councilmember David Yassky,

on the end product," says Yassky. "Any way to get there is fine by me."

Real estate developers hold some high-value cards, too. The entire venture, after all, depends on someone's willingness to produce and finance the development. Housing construction in New York is already outrageously expensive, and some builders contend that additional obligations could make it difficult for them to obtain financing. They also point out that the real estate market is extremely sensitive to changing market conditions. Will rising interest rates be prohibitive? How about the cost of labor and materials, which are also escalating?

The administration has been listening seriously to developers and their concerns. HPD Commissioner Shaun Donovan warned the state Assembly housing committee, which is considering its own inclusionary zoning legisla-

first inclusionary zoning program, initiated back in 1974. But as space has tightened and development become more expensive, affordable housing production has plummeted. When developers contended they could no longer shoulder the burden, the county began allowing them to inexpensively buy their way out of affordable housing obligations. To fix the problem, county legislators are now revising their zoning code to let builders erect taller, denser real estate, with reinforced obligations to produce or pay for new affordable housing.

Legally, New York City may have no choice but to produce results. Its own draft environmental impact statement for Williamsburg notes that redevelopment will cause substantial displacement of current residents, as they're priced out of

Construction in New York is already outrageously expensive. If there's a real estate downturn, developers warn, they won't be able to build anything.

Independent analysts calculate rezoning will increase land values five times over—making it feasible to ask for affordable housing in return.

who represents the Greenpoint-Williamsburg waterfront, is leading the charge to insist that the city, property developers or both commit to producing a significant amount of affordable housing. Community advocates are pushing the issue even further. Their bottom line is that building new affordable housing should not be a choice for developers in Williamsburg, Greenpoint and the new West Side, but a flat-out requirement.

That's how it usually works. "A lot of cities did it on a voluntary basis as a starting point," says Douglas R. Porter, author of a recent Urban Land Institute book, sponsored by the Ford Foundation, surveying 15 inclusionary zoning programs nationwide. The track record of such efforts, he concludes, is not impressive. "Until you get to the mandated stage," says Porter, "it doesn't work."

Yassky has a majority of the City Council on his side—all he needs in order to sit down at the bargaining table with housing and planning officials and work out a deal they can all get behind. He has spoken in favor of mandates as one option, yet he has also hinted that he'll accept an effective incentive program. "I'm very focused

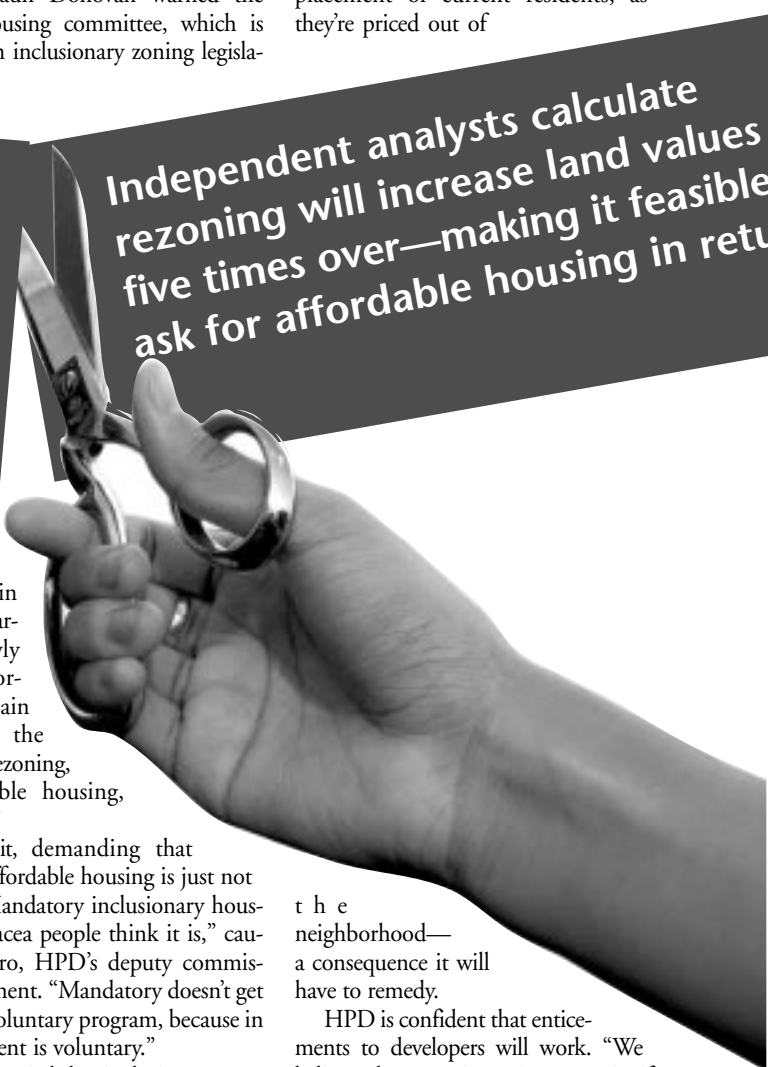
tion, that if there's even a slight downturn in the real estate market, "our newly rezoned neighborhoods will remain undeveloped and the benefits of the rezoning, including affordable housing, will go unrealized."

As HPD sees it, demanding that developers build affordable housing is just not worth the risk. "Mandatory inclusionary housing is not the panacea people think it is," cautions Rafael Cestero, HPD's deputy commissioner for development. "Mandatory doesn't get you closer than a voluntary program, because in the end, development is voluntary."

Should we be worried that inclusionary zoning could kill housing production? In Montgomery County, Maryland, it might have, had county officials not started exempting developers from their obligations. A prosperous D.C. suburban area, Montgomery had the nation's

the neighborhood—a consequence it will have to remedy.

HPD is confident that enticements to developers will work. "We believe that our incentives are significant enough that developers will choose to develop affordable housing," says Cestero. Indeed, HPD's projections for the number of affordable apartments to be built in Williamsburg assumes that every single developer on the waterfront will elect



to use the incentives.

When Shaun Donovan crunches numbers, they're not to be taken lightly. In his prior work at the U.S. Department of Housing and Urban

Development, Donovan was given a somewhat similar task: induce property owners who had built apartments under the federal Section 8 programs to keep their apartments affordable in

the long term, instead of hiking them up to market rate. Donovan's incentives did the job, say affordable housing advocates. "He was instrumental in making the details work," says

## Decoding Rezoning

All you really need to know is that inclusionary zoning, done right, will produce a significant amount of new affordable housing. But if you feel like you need a degree in urban planning to understand the proposals being fiercely debated by community boards, the City Planning Commission and the City Council—well, it wouldn't hurt. As a shortcut, here's a guide to what the city, and affordable housing advocates, are proposing to do.

	EXISTING INCLUSIONARY ZONING	BLOOMBERG ADMINISTRATION PROPOSALS		COMMUNITY ADVOCATE PROPOSALS	
<b>WHERE</b>	Manhattan areas zoned for high-rise residential development.	Hudson Yards: 30th to 43rd streets, 7th to 12th avenues, Manhattan	Greenpoint/Williamsburg: waterfront and select "upland" areas.	Manhattan: 28th to 42nd streets, west of Eighth Avenue	Greenpoint/Williamsburg: Community District 1
<b>WHO</b>	Department of City Planning	Departments of City Planning and Housing Preservation and Development		Hell's Kitchen/Hudson Yards Alliance (includes Housing Conservation Coordinators, Clinton Housing Development Company, block and tenant associations)	Mobilization Against Displacement (includes Brooklyn Legal Services Corporation A, St. Nicholas Community Development Corp., Los Sures)
<b>WHAT</b>	<p><b>Incentives:</b> Developers who include housing can build larger buildings than zoning would otherwise allow. City Planning says the average bonus is about 20 percent more square footage.</p> <p>Apartments are managed by nonprofit organizations.</p>	<p><b>Incentives:</b> The standard height of residential buildings developers can erect in the area will be limited. Those who include a certain percent of affordable units can then build to maximum height. The extra stories equal up to 33 percent of the total floor area.</p> <p>Unlike current Manhattan program, developers would be able to access HPD and Housing Development Corporation financing.</p> <p>Affordable housing can be produced in the same building as market-rate units or offsite. Or developers can preserve an existing apartment in the area.</p>	<p><b>Incentives:</b> New waterfront high-rises can range from 150 to 350 feet. But to reach those full heights, developers will have to make 15 to 25 percent affordable—or deliver an equivalent number of affordable apartments in the area.</p> <p>Inland, developers will be eligible for square footage bonuses of 10 to 20 percent if they commit to making half that extra space affordable housing.</p> <p>The less expensive the housing is to rent, the less of it a developer has to build.</p>	<p><b>Mandatory, plus incentives:</b> All developments in Hudson Yards with more than 20 units must devote 20 percent of floor area to affordable housing.</p> <p>Deepen existing inclusionary zoning incentives by shrinking the base size of new buildings and increasing the number of bonus floors.</p> <p>Expand area covered by existing protection against tenant harassment and demolition of existing building.</p> <p>Set aside publicly owned sites and acquire private property for affordable housing development.</p> <p>Priority for current area residents.</p>	<p><b>Mandatory:</b> No less than 40 percent of new apartments must be affordable to low- and moderate-income occupants.</p> <p>Priority for current area residents.</p> <p>Affordable housing in the same locations as market-rate apartments.</p> <p>Regulations to prevent harassment of tenants.</p> <p>Tax credit to landlords of existing housing who rent below market rates.</p>
<b>WHAT DOES "AFFORDABLE" MEAN?</b> (Median income in New York City is \$51,900 for a family of four.)	Renters must earn less than 80 percent of median income.	For new units, below 80 percent of median income. For preserved apartments, up to 125 percent of median income.  Permanently affordable.	Incomes of occupants can range from 80 to 175 percent of median income, or \$41,600 to \$91,000 annually.  Permanently affordable.	One in five units for tenants at less than 80 percent of median income; 50 percent for between 80 and 125 percent of median income, and 30 percent for between 125 and 165 percent of median income.  Permanently affordable.	One-third of affordable units targeted for incomes up to \$17,000 a year; one-third up to \$25,000, and one-third up to \$55,000.
<b>NUMBER OF AFFORDABLE UNITS</b>	About 600.	City predicts 2,600 new affordable units, out of 13,600 total.	City predicts 1,650 to 2,500 new affordable units, out of 10,300 total.	At least 30 percent of all new housing units.	At least 40 percent of all new housing units.
<b>TIMELINE</b>	Originated in 1987.	City Council will hear rezoning plan in January.	City Council will hear rezoning plan this spring.		

## Arrested Development

New York isn't the only big city where advocates and City Council members are going head to head with mayors and builders over whether new residential development has to include affordable housing.

### WASHINGTON, D.C.

The nation's capital currently gives some developers incentives to include affordable housing. Now more than 50 organizations are pushing to make inclusionary zoning a hard and fast requirement; if they get their way, 15 percent of all new housing units would have to be affordable. In January, the City Council is scheduled to vote on a resolution in support of that goal. Mayor Anthony Williams has not indicated where he stands. What Williams wants matters: It will ultimately be up to the District of Columbia's five-member Zoning Commission, appointed by the mayor and the federal government, to decide whether to amend the zoning code. So far, the commission is proceeding cautiously.

### CHICAGO

After Alderman Toni Preckwinkle proposed a "set-aside" ordinance in 2002, mandating inclusionary zoning citywide, Mayor Richard Daley countered with an array of incentives to get developers to build affordable housing, including density bonuses, parking requirement reductions and land donations. Preckwinkle isn't giving up on mandates. Her ordinance, which will be the subject of hearings this year, would require 15 percent of all new housing units in Chicago to be affordable. She's got 24 out of 50 aldermen on board—but without the mayor's support, the ordinance doesn't have much of a chance.

### LOS ANGELES

Councilmembers Eric Garcetti and Ed Reyes have proposed an ordinance requiring all new residential buildings with more than five units to include affordable apartments. Mayor James Hahn hasn't declared where he stands. But it would be hard not to notice strong community opposition, fanned by flyers—distributed by local Realtors—warning that the ordinance would bring outsized development to neighborhoods of single-family homes. Meanwhile, developers have released their own proposals for incentive programs that would reward them for building affordable housing.

—Sarah Unke

Michael Kane of the National Alliance of HUD Tenants. "I found Shaun to be creative, flexible, responsive, highly intelligent. He's a brilliant policy and numbers person."

But many New York affordable housing advocates wonder if the Bloomberg administration is putting ideology—specifically an aversion to government intervention in private business—ahead of the public interest. Some independent analysts, notably the Pratt Institute Center for Community and Environmental Development (PICCED), say that the rezoning of an industrial area like the Williamsburg waterfront into a residential one presents a precious opportunity that only mandatory inclusionary zoning can fulfill. The very act of rezoning a manufacturing area into a residential one dramatically increases the value of the land—estimates for Brooklyn range from five- to tenfold. Inclusionary zoning, in these circumstances, is a way for the public sector to cap-

Bolstered by PICCED's research, grassroots groups are pushing for mandates—substantial ones. In mid-November, at a presentation by Planning and HPD to a community board task force, some 700 Williamsburg and Greenpoint residents packed a high school auditorium. A parade of activists with the coalition Mobilization Against Displacement raucously interrupted HPD Deputy Commissioner Rafael Cestero's presentation of the incentive plan with chants of "We want 40 percent!" That's the portion of new apartments they want made affordable, for people with much lower incomes than the city is proposing. (The number is derived from a deal local groups made for the redevelopment of the Schaeffer brewery site on the waterfront, where four in 10 apartments will be reserved for lower-income tenants.)

Williamsburg and Greenpoint residents are passionate, informed and organized, and many are not convinced that incentives to real estate developers will address their chief concern: that instead of relieving the neighborhood's affordable housing shortage,

"We want 40 percent" is Williamsburg's rallying cry.

ture some of the value that its own rezoning creates.

San Diego launched its first experimental inclusionary zoning program this way, when it opened a new suburban area for development. It now has 800 affordable homes to show for it. "By virtue of the rezoning, the city government is adding value to that real estate," says Betsy Morris, CEO of the

the rebuilding of the waterfront will fuel an upward spiral in the cost of real estate. Williamsburg, they fear, will no longer be a neighborhood they can afford to live in. That concern has been a powerful catalyst for community organizing—organizing that is likely to influence the final plans for the neighborhood.

"Everybody understands that this is a dangerous situation, and when people see resistance to it, it crystallizes an attitude—that they don't have to accept things they don't have to accept," says Marty Needleman, director of Brooklyn Legal Services Corporation and one of the leaders of Mobilization Against Displacement. "In our community there's a history of fighting issues until they're done." ●

San Diego Housing Commission, the public agency in charge of affordable housing for that city. "I think it's fair and reasonable that there be some benefit in exchange to the city for doing it."

## The Tract Record

Nationwide, an estimated 350 to 400 local governments require residential real estate developers to include affordable housing in their projects. Here are four of the biggest—each with a lot to teach New York about how to make inclusionary zoning work.

### San Francisco

**Rank of metro area's housing among nation's least affordable:** 2

**Year inclusionary zoning launched:** 2001

An informal policy has been in place since the late 1980s, requiring developers who seek "conditional use" permits—which allow them to bend zoning rules—to make 10 percent of their units affordable. In 2001, a coalition of politicians, housing advocates and builders amended the policy and turned it into law.

**Ground rules:**

Under the new law, developers constructing buildings with 10 or more units must make 12 percent affordable, or 17 percent if they build them off-site. Or they can pay an in lieu fee (currently \$194,905 for a 2-bedroom). Housing stays affordable for 50 years. As an enforcement tool, the city maintains a lien on the property representing the difference between the restricted price of the property and its fair market value.

**What do they mean by "affordable"?**

San Francisco's "area median income" is \$95,000 for a family of four. Units for sale must be affordable to households earning no more than that amount. Apartments for rent must be accessible to a family earning 60 percent.

**Number of units produced:**

The city has not yet taken a comprehensive look at construction under the new law but estimates that 300 affordable housing units were completed under the policy since the 1980s, with another 100 in the pipeline. Most of the units were built on-site, but a full breakdown is unavailable.

**Strengths:**

Because the law was based on a longstanding policy and drafted with input from all sides, it eased developers into the idea of mandates. It makes sense that San Francisco, one of the tightest housing markets in the country, would also have one of the strongest inclusionary zoning laws.

**Weaknesses:**

Affordable housing advocates are in an uproar over what they see as exploitation of loopholes. Of particular concern are developers constructing nine-unit buildings and building off-site housing in undesirable locations.

**Lesson for New York:**

Allowing affordable housing to be built far off site limits the economic diversity of neighborhoods and dumps low-income tenants in new pockets of poverty. Under New York City's current plans, affordable units for new Brooklyn waterfront high-rises could be built near the industrial park on the other end of the neighborhood.

### Boston

**Rank of metro area's housing among nation's least affordable:** 5

**Year inclusionary zoning launched:** 2000

**Ground rules:**

Developers who seek zoning changes for a site on which they'll be building 10 or more units of housing must make 13 percent of those units affordable. (Until last year, the requirement was 10 percent.) Those units can be in the same building, or on another in lieu site. Or the developer can pay into an affordable housing fund. Homes must remain affordable for 99 years.

**What do they mean by "affordable"?**

Boston's median income is \$80,800 for a family of four. Half of all apartments must go to households earning less than 80 percent of that, or \$64,640. The rest may make up to nearly \$97,000.

**Number of units created:**

339, plus \$6.8 million secured for off-site development.

**Strengths:**

Zoning variances give developers and the city opportunities to craft site-by-site development plans that keep housing production and profits at mutually acceptable levels—typically by allowing the building to be larger than zoning would normally permit. Some housing advocates also say they like that developers have the option to build affordable units offsite, because many longtime Bostonians prefer not to live in the downtown redevelopment area where much of the new market-rate housing is being built.

**Weaknesses:**

Dealmaking risks shredding the city's zoning code. Option to build off-site exacerbates segregation.

**Lesson for New York:**

Even in a tight real estate market, mandatory inclusionary zoning does not necessarily deter development. In Boston, 3,127 new units were built in fiscal year 2004 alone, compared with just over 1,000 during the entire 1990s. The key is creating individual arrangements for each project—a planner's nightmare and developer's dream. Some New York builders who are wary of inclusionary zoning mandates say they may be willing to support them if they knew they could strike compromises with city planners on the size and scale of individual projects.

## San Diego

**Rank of metro area's housing among nation's least affordable:** 12

**Year introduced:** 2003

### **Ground rules:**

*In developments of two or more units, 10 percent must be affordable; the affordable units may be built onsite or nearby. In a developing northern suburban area, where development costs are lower, 20 percent must be affordable. Developers can, instead, pay an in lieu fee into an affordable housing trust fund. There's an exemption for developments where all units are affordable to middle-income owners. Price controls hold for 55 years. If homes are sold, the city gets some of the money back.*

### **What do they mean by "affordable"?**

*Rental units are restricted to those earning less than 65 percent of area median income, which is \$59,900 for a family of four. Homebuyers must make less than the median. "Middle income" is defined as up to 150 percent of median income.*

### **Number of units produced:**

*No units yet, but \$1.2 million collected in fees as of July. Based on construction permits issued, the city housing commission reports that there are 2,295 affordable units in the pipeline.*

### **Strengths:**

*Much as in New York, community development and religious groups successfully mobilized to push inclusionary housing as a political agenda, while CDCs worked with the City Council to help formulate the legislation. California state law requires each region of the state to demonstrate that communities are providing their fair share of affordable housing, giving San Diego an extra incentive to make inclusionary zoning work. To introduce new mandates into the housing market without disrupting production, in lieu fees for developers who decline to build affordable housing are low for the first few years, after which they will rise sharply.*

### **Weaknesses:**

*Property values are rising so quickly that developers don't want to commit to middle-income developments, which limit their profit. Inclusionary housing has had problems elsewhere in San Diego county; hemmed in by strict zoning, the nearby beach city of Carlsbad has virtually ceased to produce affordable housing under its program.*

### **Lesson for New York:**

*Rezoning underdeveloped areas for new housing provides a precious opportunity. In San Diego, a 1992 pilot program was tied to the new development of a largely unbuild suburban area on the north end of the city. The new zoning created a windfall for property owners and thus an opportunity to spin off a crop of affordable homes.*

## Montgomery County, Maryland (Suburban D.C.)

**Rank of metro area's housing among nation's least affordable:** 10

**Year inclusionary zoning launched:** 1974

### **Ground rules:**

*Under the county's Moderately Priced Dwelling Unit Program, new residential development of 35 or more units must make up to 15 percent of them affordable. Builders also get fee waivers and fast-tracked permits. There's an exemption for builders who demonstrate that including affordable housing would cause them financial hardship. The period during which the housing must remain affordable is limited: 10 years for purchased homes and 20 years for rentals.*

### **What do they mean by "affordable"?**

*Applicants must earn less than 65 percent of the county's median income, which is \$84,800 for a family of four.*

### **Number of units created:**

*11,482 through end of 2003 (8,109 homeownership units and 3,373 rentals)*

### **Strengths:**

*A long and productive track record. A 2001 Brookings Institution analysis found that inclusionary zoning created more affordable housing in Montgomery County than all federal subsidies combined. A number of apartments are owned by nonprofits, committed to maintaining their housing as permanently affordable.*

### **Weaknesses:**

*Production has decreased sharply since the late 1980s. As developable land has become scarce, more and more developers are opting to pay into a fund instead of including affordable units in their new buildings. Meanwhile, the program's time limits are pushing prices up to market rate faster than new affordable homes are being built: More than two-thirds of the housing built is already eligible to sell at market prices.*

### **Lesson for New York:**

*A successful program navigates a fine line between squeezing developers too much and asking them to do too little. When builders of high-rise condos started balking at including affordable housing, the county let them buy their way out of their obligations—often for far less than what it would cost to build a new housing unit. The County Council is now proposing to increase the amount condos have to pay in, while allowing developers to build bigger, more lucrative towers. It would also extend the duration of price controls.*