

# **Including Inclusionary Zoning: The Case of New York City**

by

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Submitted to the Department of Urban Studies and Planning  
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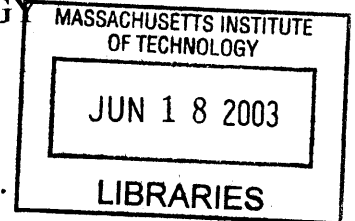
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## **ABSTRACT**

This thesis aims to lay a foundation for a more informed discourse on including inclusionary zoning as a mechanism for creating affordable housing in New York City. To this end, it provides a brief history of inclusionary zoning, and explores the general legal, economic, social, and political arguments for and against this policy tool. It examines the New York City housing crisis, and the issues of gentrification and displacement that are confronting the city. Interview responses of stakeholders, and the varied positions articulated in policy briefs and public hearing testimonies regarding the renewed inclusionary zoning debate in New York City, are presented. A case study of the rezoning proposal by the Department of City Planning for the neighborhood of Park Slope, Brooklyn and the inclusionary zoning debate that accompanied it, is used to frame the positions for and against inclusionary zoning. It also highlights the ideological and political pressure surrounding the public hearing process and the policy decisions that were ultimately reached in this New York City case. Recommendations are given for elements that should be included in a new inclusionary zoning program in New York City, as are suggestions for future research and policymaking strategies.

This thesis postulates that inclusionary zoning is a viable policy tool for incenting the development of affordable housing in New York City and maintains that the housing landscape of New York City in 2003 is ripe for a new inclusionary zoning program. It argues that a strong housing market, especially in certain gentrifying neighborhoods, combined with a continued crisis regarding the affordability and availability of housing, sets the stage for a new inclusionary zoning program. Furthermore, it contends that not only do the rezoning and upzoning proposals by New York City's Department of City Planning (DCP) provide an environment of increased development capacity in several of the city's neighborhoods conducive to the application of inclusionary zoning density bonuses, but that these proposals also exacerbate the trends of gentrification and displacement.

This thesis proposes that by leveraging the financial capacity and development efficiency of for-profit developers, New York City can ensure a low-cost, high quality housing product for working families. Further, it suggests that the application of a new inclusionary zoning program will allow developers the benefit of increased density, and when combined with other financial and tax-based incentives, can achieve an even higher profit margin than with as-of-right development.

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# Chapter 1: Thesis Introduction and History of Inclusionary Zoning

## I. Thesis Introduction

Inclusionary zoning is a viable policy tool for incenting the development of affordable housing in a community. By leveraging the financial capacity and development efficiency of for-profit developers, municipalities can ensure a low-cost, high quality housing product for working families. Developers can receive the benefit of increased density, and when combined with other financial and tax-based incentives, can achieve an even higher profit margin than with as-of-right development.

The goal of this thesis is to lay the foundation for a more informed discourse on including inclusionary zoning as a mechanism for creating affordable housing in New York City (NYC). The legal, economic, social and political arguments for and against inclusionary zoning presented in this thesis provide a persuasive context for the application of this policy tool to New York City. This thesis presents interview responses of New York City stakeholders, and the varied positions articulated in policy briefs and public hearing testimonies, to frame New York City's inclusionary zoning debate.

A rezoning proposal by the Department of City Planning for the neighborhood of Park Slope, Brooklyn provided one of the first forums for the renewed inclusionary zoning debate in New York City. The Park Slope Rezoning Proposal is used here as a case study to explore the positions for and against inclusionary zoning, and serves to highlight the ideological and political pressure surrounding the public hearing process and the policy decisions that were ultimately reached. Recommendations are given in this thesis for elements that should be included in a new inclusionary zoning program in New York City, as are suggestions for future research and policymaking strategies.

The remainder of **Chapter 1** presents a brief history of inclusionary zoning in the United States. **Chapter 2: General Arguments Related to Inclusionary Zoning**, examines and responds to the legal, economic, social and political arguments for and against inclusionary zoning. The constitutionality of inclusionary zoning is discussed, supported with examples of precedent-setting court cases. Arguments are presented relating to the economic impact of inclusionary zoning on developers, consumers, landowners, and the housing market in general. Chapter 2 also includes value-based social arguments that support or oppose a diversity of incomes in a community, and a discussion of the use of inclusionary zoning to mitigate the negative effects of the phenomena of gentrification and displacement. Chapter 2 closes with a dialogue about the political feasibility of an inclusionary zoning program and environmental impacts of such a program. This final section also discusses the appropriateness of both using inclusionary zoning to address affordable housing needs in a community, and the broader question of using zoning to impact socioeconomic characteristics of a community.

**Chapter 3: Setting the Stage for Inclusionary Zoning in New York City** presents a statistical analysis of New York City's housing crisis for the entire city, the Borough of Brooklyn, and the neighborhood of Park Slope. The process of gentrification, and the resulting displacement of moderate- and low-income families at the neighborhood level, is also addressed. The Park Slope Rezoning Proposal put forth by the New York City Department of City Planning is explained, and the plan's negligence in failing to provide for affordable units, as well as the potential displacement of long-time residents that may accompany the Park Slope upzoning, is addressed.

**Chapter 4: New York City and Inclusionary Zoning** provides a brief history of inclusionary zoning in New York City, and presents the elements of the current Inclusionary Housing Program. The renewed debate about the use of inclusionary zoning in New York City is portrayed through the presentation of stakeholder perspectives, including the viewpoints of representatives from: the New York City Department of City Planning; the New York City Council; the Brooklyn Borough President's Office; New York City housing organizations; and the for-profit development community.

**Chapter 5: Inclusionary Zoning Policy Options in the New York City Housing Environment** advocates for the use of inclusionary zoning as a feasible, low-cost mechanism for the provision of affordable housing in New York City, and responds to the different arguments put forth by stakeholders. Given the ideal housing environment in New York City for a new inclusionary zoning provision, recommendations are made for the various elements of such a program. Finally, a strategy is suggested for future research and policymaking for the application of inclusionary zoning in New York City.

The housing landscape of New York City is ripe for a new inclusionary zoning program. A strong housing market, especially in certain gentrifying neighborhoods, combined with a continued crisis regarding the affordability and availability of housing, sets the stage for an inclusionary zoning program. Furthermore, the rezoning and upzoning proposals by New York City's Department of City Planning (DCP) provide an environment of increased development capacity in several of the city's neighborhoods, allowing for density bonuses, and a planned mix of incomes in new development.

It is hoped that this thesis contributes to a more informed engagement of the relevant New York City stakeholders in a process to change the Zoning Resolution to include the specific form of inclusionary zoning that optimizes the amount of affordable housing built, given the financial feasibility of the program.

## II. The History of Inclusionary Zoning

In 1926, the U.S. Supreme court deemed constitutional the power of state government to separate land uses into districts in its precedent setting case for zoning: *Euclid v. Ambler*. Since then, the concept of zoning and its application has grown and varied. Inclusionary zoning's predecessor is incentive zoning, which is used to "provide economic benefits for a developer, who in return provides a certain desired public amenity in the development. Public capital is mobilized to create built benefits that otherwise would not exist, unless directly subsidized by the public sector. Ideally, the city would use creation of its regulatory zoning powers to provide the developer with a bonus equal in value to the cost of the amenity, plus some marginal increment. The bonus should be just large enough to provide the private developer with an incentive to build the amenity."<sup>1</sup> As explained by Jerold Kayden, "Euclidian classical zoning is essentially negative in character, a divide that specifies what cannot be done on any particular property. Incentive zoning goes beyond this nuisance aspect of denying incompatible activities, moving toward more directional planning to achieve the ideal city."<sup>2</sup>

The genesis of inclusionary zoning came about in the 1970's in response to: exclusionary zoning; a severe shortage of affordable and decent housing; and government programs which were targeting a very low-income population, but were not effectively addressing the needs of moderate- and low-income households. The historical and inherently exclusionary nature of zoning was taking its toll on the urban and regional landscape. This landscape had become one of extremes: inner city vs. suburbia; industrial vs. residential; wealthy vs. poverty stricken; black vs. white. Following the tide of the civil rights movement, socioeconomic integration as a means to equality of opportunity and a healthy society became a primary goal of many planners. Inclusionary zoning became a low-cost instrument for planning integration by dictating requirements on the income mix of new developments in suburban areas.

Also during the 1970's, a housing crisis was unfolding as much of the new housing that was being produced by the market was beyond the financial reach of not only low-income populations, but the middle class. Furthermore, the federal and state programs of public housing, Section 8, were serving the poorest of the poor, channeling all of their programmatic resources away from the middle class.

In its 1975 Mt. Laurel case, New Jersey's Supreme Court held forum to inclusionary zoning's first precedent case (Mt. Laurel I), when the case plaintiff argued that "it is the duty of the municipality to ensure that construction of a sufficient supply of least cost housing will actually take place, given the realities of the marketplace."<sup>3</sup> This argument, officially adopted in the 1983 Mount Laurel II case, resulted in inclusionary zoning becoming a mandated tool for municipalities in New Jersey if they failed to provide their fair share of the regional housing need. The court contrasts the mandatory set-aside of this

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<sup>1</sup> Jerold Kayden, *Incentive Zoning in New York City: A Cost-Benefit Analysis* (Land Policy Roundtable Policy Analysis Series number 201. Cambridge:Lincoln Institute of Land Policy, 1978), 9.

<sup>2</sup> Ibid, ii.

<sup>3</sup> Ibid, 8.

inclusionary<sup>4</sup> measure as a more effective approach than the previous voluntary approach (what it considered incentive zoning). The 1985 Fair Housing Act in New Jersey created the Council on Affordable Housing to implement the fair share and inclusionary housing provisions.

During the 1980's, many communities, and several states around the country, enacted some form of inclusionary zoning, or implemented programs mandated by the court system. In 1984, Alan Mallach described inclusionary zoning as "a program designed to bring about housing affordable to low- and moderate-income households in a community, using a variety of programs and activities, but relying principally for its implementation on an inclusionary zoning ordinance."<sup>5</sup> He goes on to define an inclusionary zoning ordinance as "a zoning scheme under which prospective developers are required by a municipality or county to provide, as a condition of approval, or alternatively, are given incentives to provide, low- and moderate-income housing as a part of or in conjunction with, their proposed development projects."<sup>6</sup> In the 1980's, inclusionary zoning was used in communities primarily to encourage the production of lower-income housing, and therefore mixed-income communities, in suburban areas. Different strategies were pursued, from establishing housing trust funds, to creating linkage policies, to adopting voluntary affordable housing density bonus programs and mandatory set-asides. Through these programs, municipalities and states began leveraging the capital of the for-profit residential and commercial development community to produce affordable units. From Montgomery County, Maryland's Moderately Priced Dwelling Unit program to Massachusetts' Anti-Snob legislation, the concept of inclusionary zoning in various forms became recognized as a viable option for suburban communities to generate affordable housing.

Inclusionary zoning techniques were debated for use in central cities as well, as metropolises such as New York City were gathering planners from around the country to debate the merits of this zoning tool's effectiveness in resolving the housing crisis, and mitigating displacement. Higher-income populations had begun to return to central cities, finding a low-cost, architecturally attractive housing stock, which was also located closer to their jobs, and in neighborhoods with increasing services and cultural amenities. Though continuing the use of inclusionary zoning to produce affordable housing and promote socioeconomic integration, the difference from the suburban, planned unit development use, was that the inner cities were recovering from abandonment and neglect. Instead of a planned, "new town" ideal, planners and city officials were watching the upswing in development with a sense of desperate anticipation, grateful for the opportunity for rejuvenation, revitalization, and the money that came with "gentrification," to bring their ailing cities back to life. They needed to craft inclusionary zoning programs that would not only not thwart this new development, but make it even more profitable. Hundreds of cities, municipalities, and states around the country have implemented urban and suburban, voluntary or mandatory, inclusionary housing programs with varied degrees of success. A

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<sup>4</sup> The definition of inclusionary zoning has expanded to both voluntary and involuntary measures subsequent to this Court's interpretation.

<sup>5</sup> Alan Mallach, *Inclusionary Housing Programs: Policies and Practices* (New Jersey:Rutgers, 1984), 2.

<sup>6</sup> Ibid.

table of inclusionary housing characteristics, including number of units produced, is provided in the Appendix.

Inclusionary zoning continues to be used by urban and suburban communities to incent the development of market-rate *and* affordable housing. Developers are able to receive higher profits than with as-of-right zoning, and the municipality, by using its zoning authority, is able to respond to a housing crisis with a low-cost, efficient policy. By including inclusionary zoning, a community can also facilitate and maintain socioeconomic integration, and the equality of opportunity for decent housing for all residents.



## **Chapter 2: General Arguments Related to Inclusionary Zoning**

In debates about inclusionary zoning, four broad, and sometimes overlapping categories of arguments emerge: legal, economic, social, and political. The presentation of these arguments, and rebuttals to them, provide a framework for arguments related to the specific case of New York City presented in Chapters 3 and 4 of this thesis.

### **I. Legal**

For the last thirty years, litigation over the legality of various inclusionary zoning ordinances has been played out in courtrooms across the country, from small town municipal courts to State Supreme Courts. Courts have been involved in both mandating quotas for affordable housing, and in resolving the challenges to legislated inclusionary zoning ordinances. It should be noted that most litigation surrounds mandatory inclusionary zoning ordinances (as opposed to voluntary), although clear precedents have been established surrounding the legality of these mandatory provisions. When a state, county, or local government considers the legality of an inclusionary ordinance, it must consider two issues: (1) the constitutionality of the ordinance, and (2) whether the relevant government entity has either expressed or implied statutory authority to adopt the ordinance. Arguments relating to the constitutionality of inclusionary zoning are presented below.

The debate surrounding the constitutionality of inclusionary zoning is often based upon the constitutionality of zoning in general. The 1926 *Euclid v. Ambler Realty Company* case decreed that zoning was an appropriate exercise of the state's police power to protect the public health, safety, morals, and general welfare of its people. Some argue against inclusionary zoning on the grounds that it is neither an appropriate use of police power, nor does it uphold public health, safety, morals, and the general welfare. Advocates of inclusionary rebut that traditional zoning has not only often impeded public health, safety, morals and general welfare, but that it has exacerbated socioeconomic segregation, and that inclusionary zoning is a remedy for these negative externalities of historical zoning policy.

Moving beyond the general zoning arguments, there are three possible challenges related to the constitutionality of inclusionary zoning (again, mostly pertaining to mandatory ordinances): (1) substantive due process is not satisfied; (2) equal protection is not provided; and (3) inclusionary zoning is a taking of a developer's property without just compensation because there is not a clear nexus between the new development and the need for affordable housing.

Substantive due process and equal protection issues are generally not challenged, as long as the ordinance appropriately addresses these issues. Substantive due process issues are raised if density incentives and mandatory set-asides do not meet the substantive due process objectives of zoning. This issue is usually satisfied if it is demonstrated "that a rational relationship exists between the regulation and the public purpose to be served, and

that the means of achieving that purpose are also reasonable.”<sup>7</sup> To satisfy substantive due process, the entity proposing the inclusionary ordinance should research and present an evaluation of general housing need, and state this purpose in the ordinance.

According to Alan Mallach, to determine whether equal protection might pose a constitutional problem, one should ask the question “does the burden of the land-use regulation fall unreasonably on one group, or... (is) a particular group... treated differently from another?”<sup>8</sup> Equal protection issues might arise if only a certain category of new developments, for instance, those with forty units or higher, are targeted by the ordinance. This also may become a problem when “inclusionary zoning bylaws impose inclusionary requirements in one zone but not in a second, otherwise identical zone.”<sup>9</sup>

“The Fifth Amendment to the United States Constitution provides that private property ‘shall not be taken for public use without just compensation.’”<sup>10</sup> Those who oppose inclusionary zoning based on the taking issue present two arguments: (1) there is no clear relationship or nexus between the development of market-rate housing and the generation of the need for affordable housing, and (2) therefore private developers should not be unfairly singled out to bear the burden of providing a public good such as affordable housing, adversely impacting their profits.

As Thomas Kleven points out in Inclusionary Zoning Moves Downtown, the nexus issue stems out of parallels being drawn between inclusionary zoning and the constitutional issues surrounding exactions. “The purpose of the nexus test is to ensure that exactions are not used to extract benefits which are primarily public in nature and for which the public should, therefore, pay- in short, to protect against unfair allocation of the costs of government.”<sup>11</sup> Alan Mallach argues that “the imposition of an inclusionary zoning ordinance is use of the police power in order to serve the general welfare... by setting specific standards to govern the nature of the development that will take place in certain districts. It is not an exaction, which is by nature external to the use permitted in the zoning district.”<sup>12</sup> It is possible that off-site development or the payment of fees in-lieu of developing affordable housing might fall into the category of an exaction.

Displacement of residents caused by new development creates a nexus relationship between redevelopment and the need for affordable housing. Both primary and secondary displacement may occur when a developer constructs or rehabilitates new or existing units. Primary displacement occurs when a developer physically demolishes existing occupied affordable units and builds new, higher-income units in their place. It can also occur when a developer rehabilitates an existing occupied structure, and either offers the current tenant compensation to leave the unit (a buyout), or outright evicts the tenant, so that she can raise the rent of the units (or in the case of for-sale units, sells the units at a higher price). Even

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<sup>7</sup> Metropolitan Area Planning Council, *Inclusionary Housing and Linkage Programs in Metropolitan Boston* (May 1986), 33.

<sup>8</sup> *Ibid*, 35.

<sup>9</sup> *Ibid*, 35.

<sup>10</sup> Mallach, 33.

<sup>11</sup> Brower, 109.

<sup>12</sup> Mallach, 36.



if one subscribes to the Filtration Theory<sup>13</sup>, it does not allow for a sufficient number of affordable units. Secondary displacement is triggered by an increase in land value because of the new development and is the result of a cumulative effect of new development and gentrification in an area. High rent and for-sale prices in one building will lead to a rise in asking rent and prices in surrounding buildings, as landlords and owners respond to the new capacity of the market to receive a higher-income population.

Several court cases in the 1970's and 1980's established the constitutionality of inclusionary zoning and determined that it is not a taking of private property in terms of the undue burden aspect. The Mt. Laurel II case states "zoning does not require that land be used for maximum profitability, and on occasion, the goals of zoning may require something less."<sup>14</sup> Daniel Mandelker argues that "because the number of units required to be set aside for lower-income housing is usually a limited percentage...the effect on the developer's return is marginal. Developers will have difficulty proving...that they can make no reasonable use of the land if they comply with the mandatory set-aside requirement."<sup>15</sup>

The New York Court of Appeals case *Golden v. Planning Board of Ramapo* decision is as follows: "The fact that (an) ordinance limits the use of, and may depreciate the value of the property will not render it unconstitutional...unless it can be shown that the measure is either unreasonable in terms of necessity or the diminution in value such as to be tantamount to a confiscation."<sup>16</sup>

An ordinance in Cherry Hill, New Jersey was challenged in 1980 by Uxbridge Associates, who argued that a requirement that five percent of newly constructed units in a high density multifamily zone be affordable to low- or moderate-income households was unconstitutional. The court said that no taking had occurred, and if the developer had perceived an economic hardship due to the ordinance, he could have taken steps to mitigate this with government subsidies.

Thomas Kleven states "if no economic loss results from having to comply with the inclusionary requirements, then the unfairness claim is undercut..." He asks, "...since the purpose of the nexus test is to discover where there has been unfairness, should a community then have to show a nexus at all between new development and the need for low-cost housing?"<sup>17</sup>

To avoid a constitutional challenge, inclusionary zoning ordinances have proactively addressed the concerns around the nexus and taking issue. Government entities have

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<sup>13</sup> The Filtration (or trickle down) Theory is based on the concept of laissez-faire in that absent government intervention, the market will bear a certain number of units affordable to upper-income persons. The theory postulates that the units that are vacated by the upper-income persons will be available to moderate-income persons. The units vacated by moderate-income units will be available to lower income persons, and so the cycle continues.

<sup>14</sup> Brower, 34.

<sup>15</sup> Ibid, 35.

<sup>16</sup> Mallach, 33.

<sup>17</sup> Brower, 119.

demonstrated how legislation supports proposed ordinances. They have documented the need for affordable housing, examples of exclusionary zoning, and past or current displacement. They have ensured through density bonuses and other financial incentives that a landowner or developer is not being deprived of profit or reasonable use of property. Mandating on-site affordable units, and linking the ordinance to their comprehensive plan has also helped dissuade challenges.

## **II. Economic**

Players on all sides of the inclusionary zoning debate, from developers to local government to affordable housing advocates, share similar economic arguments for or against inclusionary zoning. Of course, these arguments tend to diverge in their origin and purpose. Presented below is an outline of the most commonly cited economic arguments and rebuttals surrounding inclusionary zoning. It should be remembered that variations in the elements of different inclusionary zoning programs (i.e. mandated or voluntary programs, on- or off-site requirements, etc.) will impact the relevance or magnitude of some of the following arguments. The economic arguments are grouped into three categories: Impact on Developers, Impact on Consumers and Landowners, Impact on Market.

### **A. Impact on Developers**

One of the major arguments that developers make in protesting inclusionary zoning ordinances is that they inevitably have to cut into their own profit margin to help subsidize the affordable units developed under an inclusionary program. With a voluntary program, if developers believe that loss of profit will result, they most likely will not participate, avoiding perceived adverse impacts on profit. Therefore, the primary concern for developers lies with mandated inclusionary zoning. It is reasoned that small developers are impacted to an even greater extent given their smaller profit margin. Opponents of inclusionary zoning say that it is implicitly a tax on developers, adding to a long list of regulatory and tax burdens with which they have to contend. Finally, some opponents argue that inclusionary zoning reduces the value of a development for resale, especially in a soft market.

There are several responses to these arguments. The first is that, if a program is modeled correctly, the formula should include some kind of incentive (density bonus, expedited permitting, tax incentives, etc.) to offset the costs associated with both construction and subsequent decreased rental or sale income of affordable units. The second response is that 'profit margin' is an amorphous concept in development. Any developer knows that much of a development budget is, from the onset, speculation, and that as a project moves forward, adjustments to sources and uses of funds and costs are constantly being made. Profit margin is subjective, and it is difficult to prove the actual effects that inclusionary zoning ordinances have had on profit. Numbers in a spreadsheet can be massaged to say almost anything, and even the same numbers can be interpreted very differently by the various players in a debate. Looking at the participation rates of developers in voluntary programs, and the profits of developers in mandatory programs could help inform the structuring of an effective inclusionary zoning program. In terms of adversely impacting resale value, this argument is probably accurate when conducting valuation based on future income streams. If a potential buyer of a building looks at the reduced rental income from moderately priced rental units, they may be willing to offer less money for the purchase of that property.

Developers may also argue that including affordable units as part of their market development will not only lower the value of the market-rate units, but will cause

potential buyers and tenants to shy away from the development altogether. An example of one such argument is, “in uniquely attractive communities, where uniqueness stems from exclusivity, demand for market-rate units that are integrated with below-market units is apt to be considerably less than it would in the absence of an inclusionary requirement... (because) in exclusive communities, homebuyers tend to be fairly homogenous with respect to income, and not likely to want to purchase housing in economically integrated areas.”<sup>18</sup>

In response to this argument, one need only look at the mix of income both within developments and within neighborhoods that is prevalent in cities across the country. Developers plan for a mix of income all the time by offering studio apartments and penthouse suites in the same building, and single family homes, townhouses, and apartments in the same development. This does not deter consumers from purchasing these products, and in fact, is often an attractive feature. In mixed-income developments planned by local governments and non-profit developers, often times market-rate consumers outright support the diversity of elderly and young families with varied incomes, or they aren’t even aware of the mixed-income nature of the development.

Furthermore, the “affordable” units in the mixed-income developments created by inclusionary zoning ordinances often target persons at 80% to 120% of area median income; this means people that are teachers, police officers, and nurses. The importance and reasons behind supplying housing for these moderate-income persons is addressed further in the 3. *Social* section of Chapter 2.

In tight housing markets like New York City, all decent housing is in demand, and it is the culture of the city that people of diverse incomes, races, and professions live among one another. Developers need not fear that potential consumers would boycott their property because a teacher and his family are living on the floor above. Developers that support inclusionary zoning say it in fact mitigates financial uncertainty as they can be sure that the affordable units will be in high demand.

### **B. Impact on Consumers and Landowners**

Local governments in opposition to inclusionary zoning argue (and some developers concur) that the cost of affordable units is passed on to the consumer and landowners because in order to not lose profit, the developer either pays less for land, or raises the price or rent of the market-rate units. Much of this issue relies on the concept of elasticity of supply and demand: if substitute housing is not available, the increase in price will theoretically be borne by consumers. However, it follows that if demand is elastic, and homebuyers or potential renters can substitute away from a development, prices will be lower, and the developer will offer less money to the landowner to purchase the land (in this case, the landowner would be affected). If indeed the developer would not absorb hypothetical increases in costs of production (or rather decreases in income), opponents to inclusionary zoning ask whether it makes sense to have a policy

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<sup>18</sup> Marc T. Smith, Charles Delaney, and Thomas Liou, “Inclusionary Housing Programs: Issues and Outcomes,” *Real Estate Law Journal*, Vol. 25, no.2 (Fall 1996): 165.

with the goal of providing affordable housing for a few that results in increased prices of housing for the many consumers who do not qualify for inclusionary units.

The above argument is based on the assumption that inclusionary zoning ordinances do increase the costs of developers, and that developers would pass on those costs to consumers or landowners. Again, as mentioned before, it is quite possible to model a program to ensure a loss in developer profit would not occur. However, if there were, for some reason, increased costs, “a developed or developing community might also claim that...inclusionary requirements and fees, to the extent that their costs are passed back to landowners in the form of lower land prices and values, are a means to recapture the unearned increment in land values which results not from the productive efforts of this landowner but from the spillover benefits of other public (i.e. upzoning) and private development to which the landowner is not in fairness entitled.”<sup>19</sup>

When a homeowner of an affordable unit decides to sell, resale restrictions may limit the profit allowed as a result of this transaction. Resale restrictions regarding both time and money are paramount to stopping a purchaser from buying a unit at a low price, turning around and selling the unit immediately at a market-rate, and receiving a huge windfall. Limits on selling price also allow for the stock of affordable units to not diminish as units are sold over time. Unfortunately, resale restrictions are a “Catch-22”: one of the primary benefits of homeownership is the equity realized by a homeowner upon sale of their property, due to market appreciation or improvements made to their property. For affordable homeownership units developed under inclusionary zoning ordinances, the trade-off between the relinquishing of accumulated equity, and the benefits of providing permanent housing for moderate-income households, is an issue that will have to be further debated by policymakers.

### **C. Impact on Market**

The most widespread argument against inclusionary zoning (especially in areas where there is a housing crisis) is that the increased costs (whether real or perceived) of development will chase developers away from adding to the already scant supply of housing. The concern of decreased housing production may have some merit in soft markets, or in smaller markets trying to attract development. However, in markets such as New York City, the demand for housing is increasing at a pace far exceeding development (as statistics presented in Chapter 3 attest to). The competition among consumers for both rental and homeownership units is fierce. In addition, the current cost of capital is at record lows, balancing relatively higher construction costs. Where there is a demand for residential units, developers will be likely to follow. Furthermore, density bonuses should reduce land and development costs as they allow for more housing units to be built per area of land, spreading costs over more units.

Opponents of inclusionary zoning argue that if developers are willing pay less for land because of anticipated increased costs, landowners will be unwilling to sell their land at the lower prices. Some fear this will result in less land available for development, and therefore, less development. Again, the supposition here is that developers’ costs do, in

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<sup>19</sup> Brower, 121.

fact, increase, and that developers would offset this increase by reducing costs associated with purchasing land. As discussed above, a well crafted program can ensure that developer's costs do not increase. Further investigation of precedent experience relative to these claims would benefit the discourse around the economic impacts of inclusionary zoning ordinances.

Continuing along the theme of land value, Alan Mallach states that "...the effect of an inclusionary housing program on land value in a given zone...is identical to that of a downzoning of the same land. As the prospective income stream from the property is reduced, the value of the land is proportionately diminished"<sup>20</sup> However, municipalities downzone as normal practice and policy all over the country, and with this policy, landowners are never compensated for any potential decrease in the opportunity cost of what the value of their property might have been had they decided to redevelop. Yet with an upzoning or rezoning that increases the value of land, depending upon the extent of the change, inclusionary zoning can leverage this increase to provide affordable units with no net cost to the developer.

An economic (albeit ideological) argument presented as an alternative to inclusionary zoning programs, or any government policy or subsidy relating to the provision of affordable housing, is that a filtration or trickle down of housing units from the wealthy will provide for the necessary amount of affordable housing in a community. This theory does not take into account the pyramid structure of our economy, with a small portion of upper-income persons demanding a small number of new or redeveloped units. The demand by both moderate- and low-income households will far exceed the supply of units left vacated. This theory also does not consider the inevitable deterioration of units traveling through the housing cycle.

Inclusionary zoning increases access to employment for moderate- and low-income workers. In this sense, inclusionary zoning supports the economic development goals of a city by creating affordable housing for workers to live in.

The aggregate impact of inclusionary housing programs on housing markets merits further investigation by economists and urban planners, perhaps looking at the markets of municipalities with established mandated inclusionary zoning programs. It will of course be difficult to know what the market would have been like without the program, so it might also be beneficial to collect housing data in markets that are planning to implement inclusionary ordinances in the next few years, so a baseline comparison would be available.

In Inclusionary Zoning Moves Downtown, Michael Stegman argues that it is not necessary to look at inclusionary zoning from an economic perspective: "Economic efficiency is neither the sole basis for public action, nor the lone value that should be maximized when the public sector intervenes in the housing market."<sup>21</sup> In a sense, he is correct, as the data and quantitative analyses involved in crafting an inclusionary

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<sup>20</sup> Mallach, 90.

<sup>21</sup> Brower, 101.

provision can, and have been, translated into economically and financially feasible programs. Planning ideology becomes the stage upon which formulas are wrought, and the numbers can, as with any policy, be used to support myriad ideologies. In this way, as Stegman suggests, perhaps social and public good arguments may (and should), play a larger role in determining the legitimacy of an inclusionary zoning provision. That said, it is imperative that time is taken to flesh out financial and architectural models of any inclusionary zoning ordinance proposed, and that results-driven research is conducted (post implementation) of programs around the country regarding micro- or macroeconomic impacts. This thesis highly recommends, but does not have the time or the resources, to conduct such an investigation. However, this thesis does pursue documentation, and to a certain extent, examination, of the past and current economic arguments for and against inclusionary zoning with the hope that engaging the reader in these arguments leads to further quantitative analyses regarding their merit.

### III. Social<sup>22</sup>

“Inclusionary zoning will continue to be sought in tight and expensive housing markets where there is socially responsible interest in providing both housing opportunity and economic balance.”<sup>23</sup> Most of the arguments for inclusionary zoning are based on an inherent belief that diversity of income, race, age, culture, and religion is a good thing. As our society tends to be stratified to a certain extent with persons of similar income being of a similar race, culture, etc., the equal opportunity for all groups to live in adequate housing conditions is not always present.

Gentrification, when it does not entirely consume a low-income or working class neighborhood, promotes diversity and deconcentrates poverty. However, when gentrification begins leading to the displacement of persons of a certain income level (and therefore, often times, a certain race, culture or religion), it becomes a force of social exclusion and resegregation. Inclusionary zoning, by providing the opportunity for moderate- and low-income persons to move to or remain in the central city, will ensure a certain amount of sustained diversity.

In today’s central cities, especially New York City, gentrification is displacing not only low-income persons, but the middle class as well. A city’s vitality will not be sustainable if it houses primarily upper-middle and middle-class citizens, and especially if teachers, healthcare workers, municipal service employees, and not-for-profit workers cannot afford to live in the communities they serve. Fundamentally speaking, without diversity, what will happen to our understanding and acceptance of people of different skin tones, religion, and financial means?

It is unjust for families who have lived in their neighborhoods for generations to be denied the benefits of the improved housing and amenities that come with gentrification. Are these families to be uprooted to yet another neighborhood with unacceptable housing conditions and services? “Rather than including them by offering decent education, employment, and housing, the poor have been treated as an obstacle to urban revitalization. It is only when we begin to act inclusionary that our cities will have a chance to grow decently and equitably.”<sup>24</sup> Ironically, “ethnic minorities and the poor...carried the debt service on devalued inner-city housing stock with their rent and mortgage payments. Their servicing of these debts freed capital to be used on the supply side, to finance the development of the new residential subdivisions in the suburbs. Minorities and the poor, living in substandard housing which no one else would occupy and for which they have overpaid, thus subsidized the development of exclusive housing for the more affluent ...”<sup>25</sup>

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<sup>22</sup> Many of the social arguments presented in inclusionary zoning literature relate to the traditional use of inclusionary zoning to mix new developments in the suburbs, assuming of course that low- and moderate-income persons would move out of the central cities to inhabit the new affordable units. The social arguments in this paper focus on inclusionary zoning as applied to existing, central city neighborhoods.

<sup>23</sup> Robert Burchell and Catherine Galley, “Inclusionary Zoning: Pros and Cons.” *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, The Center for Housing Policy. Vol. 1, no. 2 (October 2000): 6.

<sup>24</sup> Brower, 4.

<sup>25</sup> Brower, 67.



Inclusionary zoning, especially when it has a provision for local preference, may allow working families to remain in their own neighborhoods.

The argument can be made that residents owning homes in a gentrifying neighborhood should be able to benefit from the skyrocketing value of their home if they choose to sell, or rent at higher levels to increase their income. The operative word here is **choose**. Often times, due to the cumulative affect of deferred maintenance of property, lower- and moderate-income owners may be forced to leave if they cannot afford to rehabilitate the house to attain the higher rental income, or are unaware of how to leverage the newly assessed value of their home to obtain loans for maintenance and repair.

Zoning policy has traditionally been exclusionary in nature, whether purposefully or not. Inclusionary zoning provides a remedy to, or ameliorates the past negative segregative impacts of zoning. Social inequity implications have been inherent in traditional zoning, while “in a broad sense, inclusionary zoning represents the integration of social equity goals into local land-use planning by stimulating the production of affordable housing.”<sup>26</sup>

There are several common social arguments made against inclusionary zoning. The opposition has posed the question of whether social friction exists in mixed-income developments.<sup>27</sup> It has also been suggested that lower- and moderate-income families located in high priced condominium developments find a transitory and less family oriented atmosphere in buildings primarily occupied by young, white, single professionals earning high incomes. This argument ties into a similar one that discusses a sense of isolation of low- and moderate-income tenants from their previous community.

Others argue that those who would benefit from the affordable units, unless a local preference restriction was implemented, might be university students or twenty-something, white professionals who come from wealthy families, but who haven’t yet reached their full earning capacity. Inclusionary programs designating a mix of affordability within the same building might also result in skimming the most credit-worthy, financially solvent, highly employed and politically astute residents from lower-income neighborhoods, “transport(ing) the citizens who could do the most for reviving...(the distressed neighborhoods)...”<sup>28</sup>

Social arguments for or against any policy tend to be inherently difficult to quantify, and if quantifiable, even more difficult to evaluate. Conclusions drawn from, or decisions based upon social analyses, despite the attempted rigor in objectivity, will still reflect an ideological foundation of the decision maker. Social arguments for inclusionary zoning may unwittingly have negative implications resembling economic, legal, and political opposition arguments, or sadly, are purposefully cloaked in these other reasonings. The social framework or belief system behind legal, economic, and political arguments must extrapolated, teased out, and considered in policymaking. The social arguments for and

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<sup>26</sup> Ibid, 7.

<sup>27</sup> Smith, 170.

<sup>28</sup> Burchell, 5.

against inclusionary zoning are also tightly wound with the social arguments surrounding the need for affordable housing, and need to be teased out as well.

Furthermore, various incarnations of inclusionary zoning (on-site vs. off-site, population targeted) may engender completely different social effects. For example, the development of on-site affordable units promotes the highest degree of socioeconomic integration, whereas if developers have the option of developing affordable units in an already low-income neighborhood that is a few miles from their luxury development, isolation of moderate- and low-income groups is perpetuated. Therefore, just as with the legal and economic implications of inclusionary zoning, the social impact should eventually be examined relative to the specific model of inclusionary zoning proposed.

## **IV. Political**

There are several questions relating to the evaluation of inclusionary zoning from a political standpoint. One can ask if it is a politically feasible strategy- that is, can it successfully pass through the approval process of local government entities, as well as garner the support of the affected constituency? Another question is whether this is an appropriate policy for addressing the need for affordable housing in a city; will it be effective, or is there perhaps a better strategy? A third question relates to the appropriateness of the use of the regulatory tool of zoning to impact the socioeconomic character of a community. Furthermore, when the details of a specific inclusionary zoning model is decided upon by a City, the environmental impacts should be evaluated (i.e. effects of increased density on transportation infrastructure, services, etc.) A political analysis should consider all of the previously discussed aspects of inclusionary zoning: legal, economic, and social. Most important to consider is that the political climate and prevailing ideology of a city's elected administration can impede or facilitate the approval of an inclusionary zoning program, regardless of the favorable research and successful precedent experience that might be presented. This last point will be addressed in Chapter 5, specifically in relation to the case of New York City.

### **A. Political Feasibility**

Whether or not an inclusionary ordinance will meet with political approval depends greatly upon the specifics included in the ordinance, or the strategy used to apply it. For instance, if the advocating entity decides to pursue application of the ordinance to all residential zones within a municipality, the difficulty of political approval would be much greater than if the ordinance is paired with a current zoning initiative (such as upzoning of a defined area), or if it is passed as a mappable<sup>29</sup> zoning option. Inclusionary zoning can be attractive to local government as a policy for providing affordable housing because basic zoning doesn't have to be changed.

Depending upon the group that proposes an inclusionary ordinance, different political scenarios could ensue. For example, in cities like Chicago and New York City, local affordable housing advocacy organizations are spearheading inclusionary zoning initiatives, and taking on local governments as opponents. In other cities like Cambridge, Massachusetts and Montgomery County, Maryland, the inclusionary zoning ordinance's genesis stemmed from the planning department itself. Often times, state legislatures mandate the provision of a certain percentage of affordable units by local governments, while strongly urging these governments to use inclusionary zoning as the most preferred mechanism for affordable housing production. Other times, cases brought before the courts by developers or municipalities have resulted in court mandated inclusionary ordinances (such as the most commonly mentioned precedent cases of Mt. Laurel I and II). A proposed zoning ordinance will often have to go through a municipality's formal zoning approval process, where it will have to withstand public hearings, and scrutiny by the City Council, City Manager or Mayor, the City's planning department and/or

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<sup>29</sup> For instance, the provision would exist as an option for specific neighborhoods or zones to adopt the ordinance specifically for their defined geographic area.

planning oversight commission, and other relevant city agencies or district governing bodies.

#### **B. Appropriate Policy for Addressing Affordable Housing Needs in a Community**

Inclusionary zoning is considered by many local governments to support their policies of deconcentration of poverty, and affordable housing goals. It is a low-cost way for governments (especially in the context of today's local government deficits) to provide affordable housing by leveraging the capital of the private market. Inclusionary zoning also supports economic development goals by ensuring the provision of housing units affordable for the workers of businesses considering relocating to a community. Businesses know that having their workers live close by cuts down on long commutes, increasing productivity. As Sheila Russell, a Councilmember in Cambridge, MA, said in 1995, "Inclusionary zoning is a compromise that I support to ensure that more housing is closer to places of employment, social services, and public transportation; allowing certain privileges in return for affordable housing will enable local business to prosper while awarding residents with these advantages."<sup>30</sup> A developer<sup>31</sup> from Montgomery County, Maryland says, "Policemen, firemen, and teachers are some of the most common purchasers of Moderately Priced Dwelling Units. Their lives are enriched by living in a better part of town near their work. It serves a purpose to have public servants near their work."<sup>32</sup>

Inclusionary zoning supporters argue that "when a zoning change by the public sector increases the value of a gentrifying property, why not recapture some of that value in the form of housing in those areas of the city that need it, instead of allowing it to be privately capitalized...?"<sup>33</sup> However, as a New York City planner pointed out, when a City downzones, local government doesn't have to compensate for the lower property value, so it may be unfair to assume that developers should give back to the City when they receive windfall from upzoning.

Developers also perceive that government is shifting its responsibilities to the private sector and homebuilding industry if it uses inclusionary zoning. Advocates refute this, again looking to the windfall a developer might be getting from an upzoning, and is most certainly getting from the standard depreciation or tax incentives provided to all developers in the United States regardless of zoning policy.

Local planning departments, such as New York City's, claim a position of laissez-faire when it comes to inclusionary zoning. They say that the filtration process takes care of the provision of affordable units. They claim that if lower-income units are built specifically under an inclusionary zoning program, this will take away demand for "used" units, and the middle- and upper-income persons won't be able to rent their units out,

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<sup>30</sup> Burchell, 3.

<sup>31</sup> Richard Dubin, President of The Dubin Company, has built 7000 rental and homeownership units throughout Maryland.

<sup>32</sup> New Century Housing, "Inclusionary Zoning: The Developer's Perspective." *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, The Center for Housing Policy. Vol. 1, no. 2 (October 2000): 2.

<sup>33</sup> Brower, 192-93.

impacting the demand for new upper-income units. An argument such as this is certainly not applicable in hot housing markets like New York City, Boston, and Chicago. If the filtering process has any implications in these cities, it is that of lower-income persons living in high-priced, deteriorated units, or getting displaced altogether.

Some argue that place-based subsidies are an inefficient way to provide affordable housing, claiming that “subsidies of this sort are inherently inferior to cash transfers or other transportable subsidies.”<sup>34</sup> Further, some think it makes more economic sense for local government to target distressed areas with affordable housing funding rather than focusing tax payer dollars on areas where the market is revitalizing itself, such as in gentrifying areas. Opponents point out that inclusionary zoning benefits only a few, and ask why government should target large amounts of funding to only a few moderate-income households.

There are also political arguments put forth by affordable housing advocates in opposition to inclusionary zoning. These advocates say that the policy errs on the side of being too soft, on not partnering aggressively enough with the for-profit development community. They argue that the number of households that benefit is relatively small compared to the need. They also criticize programs (most recently in Chicago) targeting moderate- versus low-income persons. Most inclusionary housing programs target only moderate-income families, and often times these families are not originally from the gentrifying neighborhoods.

### **C. Appropriateness of Zoning to Impact Socioeconomic Characteristics**

Opponents to inclusionary zoning claim that it is a type of social engineering, and that it is not the role of zoning to impact the socioeconomic character of a neighborhood or city. However, as the decision in the precedent setting case of Mt. Laurel Case reads, “it is nonsense to single out inclusionary zoning...and label it ‘socioeconomic’ if that is meant to imply that other aspects of zoning are not...Indeed any significant kind of zoning now used, has a substantial socioeconomic impact and, in some cases, a socioeconomic motivation. It would be ironic...[if inclusionary zoning was ruled out] when its need has arisen from the socioeconomic zoning of the past that excluded it.”<sup>35</sup> If anything, inclusionary zoning is appropriate to remedy overt or covert exclusionary implications of traditional zoning, and the resulting separation and segregation of uses and people. Paul Davidoff asks, “If we can zone for parking, why can we not zone for people in our downtown zoning ordinances?”<sup>36</sup> He goes on to say, “Zoning, in its modern incarnation, is, in effect, a complex system of environmental controls...: the enigma of population density, the ephemeral quality of life, the goal of creating a balanced integrated urban community and the duty to address the pressing needs of the poor, homeless, and underprivileged members of our society. On a broader level, zoning represents a municipality’s major tool in affecting its long-range goals as a pluralistic community.”<sup>37</sup>

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<sup>34</sup> Ibid, 86.

<sup>35</sup> Mallach, 30.

<sup>36</sup> Brower, 3.

<sup>37</sup> Ibid.

#### **D. Environmental Impacts**

Some worry about the increased demands on infrastructure, services, and the environment the increased density of an inclusionary zoning bonus might create.<sup>38</sup> Any inclusionary ordinance with a density bonus should evaluate environmental impacts in a given neighborhood. However, often times, in cases of upzoning or rezoning, an increased density is already being proposed by a municipality, and so including inclusionary zoning does not add density, but merely ensures that a certain percentage of units are affordable.

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<sup>38</sup> Metropolitan Area Planning Council, 53.

## **Chapter 3: Setting the Stage for Inclusionary Zoning in New York City**

A severe housing crisis, spreading gentrification and displacement, and several Department of City Planning upzoning and rezoning proposals set the state for the expanded application of inclusionary zoning in New York City. New York City is known for the inability of its housing market to provide an adequate number of units to house its more than eight million residents. In simple economic terms, the lack of a sufficient supply of housing, paired with an abundant demand, leads to New York City's infamous sky-high housing prices and rents. This housing crisis is an imposition on upper-income residents, a burden on the middle class, and a catastrophe for lower-income citizens.

Before and during the Twentieth century, the existence of a housing crisis in New York City meant that low- and moderate-income residents lived in overcrowded, under-maintained, and often hazardous living conditions. The segregation of impoverished and wealthy neighborhoods, aligned with a separation of race and ethnicity, was clear and drastic. Over the last 40 years, upper- and middle-income residents of New York City, and from all over the world, began to gentrify traditionally lower-income and working class neighborhoods, as the supply of housing in New York City's historically upper class neighborhoods dwindled. The increased demand for housing in formerly blighted neighborhoods led to profitable development, and welcome revitalization. In Manhattan neighborhoods from Greenwich Village, to SoHo, to Chelsea, and now Harlem, individuals, families, and developers with the money to acquire property, and rehabilitate the housing and commercial stock (or demolish and construct new units) into high rental or homeownership residences have changed once neglected neighborhoods into the most trendy and expensive areas in New York City. Gentrification has also spread to the outer boroughs, particularly Brooklyn, as neighborhood housing prices and rents quadruple within just a few years. Once affordable to groups such as city service workers, tradespersons, and teachers, Brooklyn neighborhoods like Carroll Gardens, Cobble Hill, Park Slope, Fort Greene, Williamsburg, and Greenpoint are gentrifying rapidly, or have already almost completely gentrified. With the exception of a dwindling percentage of rent regulated units and a stagnating supply of public housing, the majority of housing in these neighborhoods has become unaffordable to many long-time residents.

Despite the many merits of gentrification discussed in Chapter 1, the displacement of low- and moderate-income New Yorkers from their homes and neighborhoods has become an unfortunate byproduct of this phenomenon. Not surprisingly, according to the many sources interviewed for this thesis and the research conducted, no substantial attempts to quantify, or even rigorously qualify this gentrification, or the resulting general displacement, have been found. One exception, a report by the Citizens Housing and Planning Council entitled "Gentrification and Displacement", presents the results of a study conducted in New York City, and regression analysis performed by the group.

New York City's Department of City Planning has proposed several "upzonings" or "rezonings"<sup>39</sup> to create an incentive for even more development across the City. "Upzoning" in general terms means the changing of zoning regulations to allow for a greater density for new development. For example, instead of only being allowed to build a four story building, after upzoning, a developer might be allowed to build eight stories. Because a developer can build more on the same geographically defined land area, the land which is upzoned will increase in value (sometimes dramatically depending upon the increase in density). The Department of City Planning's goal in upzoning is to spur more development, the rationale being that if it is more profitable to develop in a certain area, more developers will develop there, adding to the housing supply and lowering overall market prices. As explained in this chapter's Section 3. *Upzoning and Rezoning*, new development of housing units will most likely not be affordable to low- and moderate-income residents of Park Slope, and may even exacerbate displacement of long-time residents.

Chapter 3 will examine the affordable housing crisis at the New York City, Brooklyn, and Park Slope neighborhood levels. Gentrification and displacement indicators will be discussed, as well as the need for further quantitative research regarding these indicators. The Department of City Planning's proposal to upzone a section of the Fourth Avenue corridor in Park Slope, Brooklyn will be presented and discussed as a case study of a foregone opportunity to include inclusionary zoning to mitigate displacement, and ensure the provision of affordable housing with new development. Data tables regarding Housing Affordability and Availability are presented for New York City, Brooklyn, and Park Slope at the end of Chapter 3. These data are also discussed within the text, and are illustrated in several graphs.

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<sup>39</sup> An example of rezoning would be changing from a manufacturing to a residential zone.



## I. Addressing New York City's Housing Crisis

In 1985, Dwight Merriam states in the book Inclusionary Zoning Moves Downtown, "I'm not sure that we need to identify and agree on a (housing) crisis in order to be concerned about this problem. All we must do is recognize a need, and there certainly is one for increased housing opportunities for low- and moderate-income families in the central city."<sup>40</sup> However, it is appropriate for the legitimacy of this thesis to lay a foundation of understanding regarding the need for affordable housing in New York City generally, Brooklyn more specifically, and most especially, the neighborhood of Park Slope (the focus of the Department of City Planning's upzoning proposal).

### A. New York City Housing Crisis

Anecdotally, most people in New York agree that they pay too much for rent, and that the quality of their housing is far from adequate (in terms of both space and maintenance). Housing First!, a not-for-profit umbrella and advocacy organization in New York City for local affordable housing development corporations, suggests that "unlike previous housing crises that have confronted the city, today's shortage affects not only low-income New Yorkers, but moderate- and middle-income households as well."<sup>41</sup>

#### *Affordability*

In *The New Marketplace* report (December 2002), New York City's Department of Housing, Preservation and Development, and Mayor Bloomberg's Administration assert that "nearly half of all New Yorkers pay more than 30% of their income in rent"<sup>42</sup>, and that "487,957 households, or 27.1% of all renter households pay more than 50% of their income for rent."<sup>43</sup> These statistics are startling, given that the generally accepted<sup>44</sup> capacity of a household to pay for housing costs (rent or mortgage, plus utilities) is no more than 30% of monthly income.

Housing First! explains that over the last twenty years, "rents are up, and real income is down. Between 1981 and 1999, according to Census Bureau data, [New York City] median rent has increased at twice the rate of inflation, while median renter household income has stagnated for 25 years and low-income families have actually lost ground in real terms. From 1981 to 1999, median rents (adjusted for inflation) increased by 33 % while real median renter income increased by only 3%."<sup>45</sup> Housing First! also cites National Low Income Housing Coalition statistics: "a person needs to earn over \$18.25 an hour working 40 hours per week to afford a two-bedroom unit at New York's "fair market rent"- 354 percent more than the present minimum wage of \$5.15 per hour."<sup>46</sup>

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<sup>40</sup> Brower, 95.

<sup>41</sup> Housing First! *Building for the Future: New York's Affordable Housing Challenge*, November 2001. Database on-line. Available from <http://www.housingfirst.net>. Accessed 3 March 2003. p. 3

<sup>42</sup> The City of New York (Michael R. Bloomberg, Mayor), and Department of Housing Preservation and Development (Jerilyn Perine, Commissioner). *The New Marketplace: Creating Housing for the Next Generation*. December, 2002. p. 3

<sup>43</sup> Ibid, 4.

<sup>44</sup> Department of Housing and Urban Development affordability guidelines.

<sup>45</sup> Housing First! *Building for the Future: New York's Affordable Housing Challenge*, 7.

<sup>46</sup> Ibid.

### ***Housing Availability***

The lack of housing availability is evident in the extent of overcrowding in New York City, extremely low vacancy rates, a growth in population that far exceeds the rate of housing production, and extensive waiting lists for assisted housing.

*The New Marketplace* report states that “from 1996 to 1999, the number of overcrowded families increased to 75,715, and the number of severely crowded to over 215,000 families. In addition, the number of doubled-up households increased from 203,000 in 1996 to 221,000 in 1999, an increase of 9.1%.”<sup>47</sup>

Housing First! states that “housing experts generally agree that a housing market must have at least a 5% vacancy rate in order to provide opportunities for newcomers to find housing and to allow existing residents to move into larger units as their families grow, move up as their earnings increase, and downsize in their senior years.”<sup>48</sup> However, “in 2000, the citywide vacancy rate for rentals was 3.2%, down from 4.1% in 1990...and it is most severe for low-rent units: the number of vacant apartments renting for under \$700 went down by almost 14% (from 1998 to 2001)..., while those renting under \$400 were reduced by 66%.”<sup>49</sup>

As Michael Schill states in a New York Times Opinion piece, “between 1990 and 2000, the number of households [in New York City] increased by 205,300. The number of new apartments and homes went up by only 81,000.”<sup>50</sup> As illustrated in ***Graph 1: New Housing Units vs. New Households in New York City, Brooklyn, and Park Slope 1990-2000***, the demand for new units has far exceeded supply.

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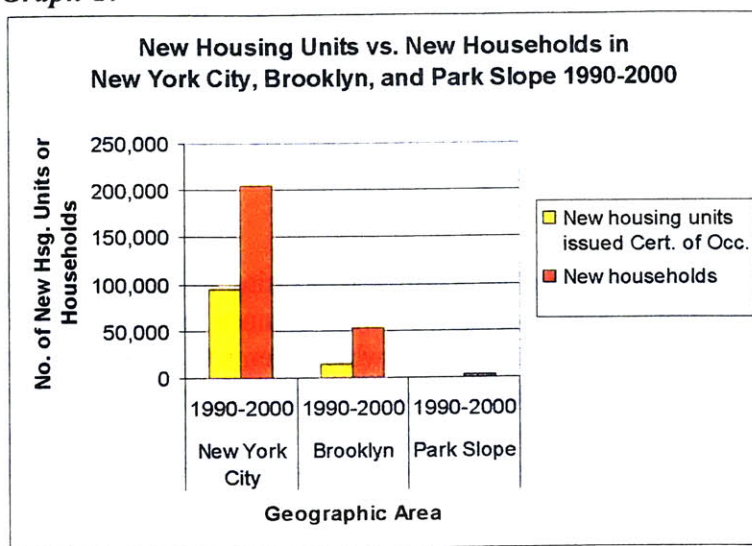
<sup>47</sup> The City of New York (Michael R. Bloomberg, Mayor), and Department of Housing Preservation and Development (Jerilyn Perine, Commissioner), 4.

<sup>48</sup> Housing First! *Building for the Future: New York's Affordable Housing Challenge*, 5.

<sup>49</sup> Ibid.

<sup>50</sup> Michael Schill, “More Housing on the Map,” *New York Times*, 18 December 2002, sec. A , p. 35.

**Graph 1:**<sup>51</sup>



The length of waiting lists for government assisted housing units is another indicator of the need for low-income and very low-income housing in New York City. “The typical family will now spend eight years on the waiting list for an apartment in the City’s public housing developments. Currently 224,000 households are on the Section 8 rental voucher waiting list, and 141,000 households are on the waiting lists for public housing.”<sup>52</sup>

## **B. Brooklyn Housing Crisis**<sup>53</sup>

### ***Housing Affordability***

In 1999, 26.5% of Brooklyn households paid greater than fifty-percent of their income for rent, and 22% of households had a severe housing affordability or quality problem. While median household income in Brooklyn decreased by 4.3% over the 10 year period from 1990 to 2000, median monthly rent increased by 9.1%. Sales prices since 1986 have shown a dramatic increase in market value for all building types, as single family homes have increased in value 21.3%, 2-4 family homes have increased in value by 34.4%, and 5 + unit residential buildings have increased in value by an incredible 71.6% (reflecting the ability of the owners to collect ever increasing rents).

<sup>51</sup> Data for Graph 1 taken from: Denise Wallin, Michael H. Schill, and Glynis Daniels. *State of New York City’s Housing and Neighborhoods 2002*. New York: Furman Center for Real Estate and Urban Policy, New York University, 2002. The 10 year period used for New Housing Units issued Certificates of Occupancy was actually 1991 to 2001, but for purposes of comparison, the dates are modified slightly in the graph. The bar graph was constructed solely for the purposes of this thesis by the author.

<sup>52</sup> Housing First! *Building for the Future: New York’s Affordable Housing Challenge*, 6.

<sup>53</sup> Unless otherwise indicated, all data cited in sections B. *Brooklyn Housing Crisis* and C. *Park Slope* in Chapter 3 of this thesis are from Denise Wallin, Michael H. Schill, and Glynis Daniels. *State of New York City’s Housing and Neighborhoods 2002*. New York: Furman Center for Real Estate and Urban Policy, New York University, 2002.

### ***Housing Availability***

The number of severely crowded households has gone up in Brooklyn from 5.6% in 1990 to 7.1% in 2000. As a testament to the inability of the supply of new housing units to keep pace with demand, 53,408 new households settled in Brooklyn, with a mere 14,538 new units being produced (please see ***Graph 1: New Housing Units vs. New Households in New York City, Brooklyn, and Park Slope 1990-2000***).

### **C. Park Slope Housing Crisis**

The same data used to illustrate the need for affordable housing in New York City and Brooklyn cannot be presented in such a straight forward manner for Park Slope.<sup>54</sup> This is probably due to the phenomenon of gentrification, which seems to stratify data indicators, or skews them, as the data are really reflecting two extremes of population: the relatively lower-income, working class residents with a long tenure in the neighborhood, and the newly arrived middle- to upper-income population who is gentrifying the neighborhood.

### ***Housing Affordability***

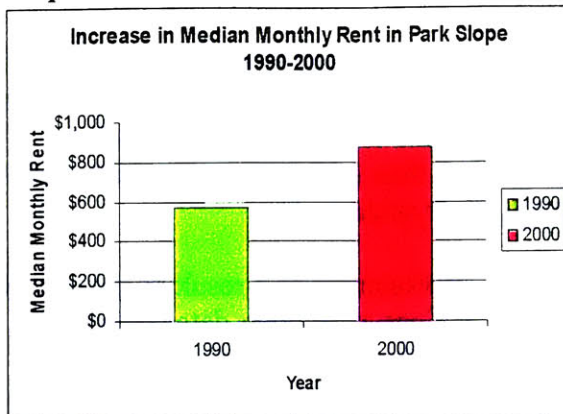
For Park Slope, the decrease in the statistic showing the percentage of median household income spent for rent (from 25.9% in 1991 to 22.5% in 1999) does not reflect a decrease in rent, or necessarily an increase in the income of long-time residents. There was actually a **52% increase in median monthly rent in Park Slope from 1990 to 2000** (\$575 to \$875). For repeat sales prices, data are only available for 2-4 family homes, with a 65.7% increase in value from 1986 to 2001. The median price of a home in Park Slope went from \$287,500 in 1991 to \$362,000 in 1996, and has most likely doubled in 2001.<sup>55</sup> Furthermore, a staggering **56.6% increase in median household income in Park Slope over a 10 year period** surely does not reflect a drastic increase in the income of long-time residents, and probably points to the influx of upper-income people into the neighborhood. Please see ***Graphs 2 and 3*** below for an illustration of the increases in median monthly rent and median household income in Park Slope from 1990-2000.

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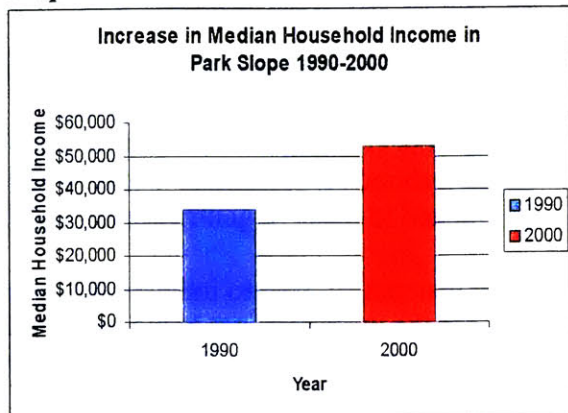
<sup>54</sup> In Wallin, Denise, Michael H. Schill, and Glynis Daniels, *State of New York City's Housing and Neighborhoods 2002*, data are labeled "Carroll Gardens/Park Slope".

<sup>55</sup> Carl H. McCall, (State Comptroller), *Brooklyn: An Economic Review*, Report 1-2000. (New York: Office of the State Deputy Comptroller for the City of New York, 21 May 1999), 26.

**Graph 2:**<sup>56</sup>



**Graph 3:**<sup>57</sup>



It is possible that the data for the population that is being displaced in Park Slope has been obscured by the drastically higher income data for new, upper-income residents. However, one can still observe an affordability problem for lower-income residents, with the statistic that 18.4% of Park Slope residents pay greater than 50% of their income in rent.

### ***Housing Availability***

The number of households in Park Slope grew by 3,472, while there were only 283 new housing units produced. The vacancy rate dropped from 3.4% in 1991 to an extremely low rate of 2.2% in 1999.

<sup>56</sup> Data for Graph 2 taken from: Denise Wallin, Michael H. Schill, and Glynis Daniels, *State of New York City's Housing and Neighborhoods 2002*, New York: Furman Center for Real Estate and Urban Policy, New York University, 2002. The bar graph was constructed solely for the purposes of this thesis by the author.

<sup>57</sup> Data for Graph 3 taken from: Ibid.

## II. Gentrification and Displacement

The New York City and Brooklyn data presented above seem not to reflect gentrification, perhaps because the data are aggregated. The movement and scale of gentrification is most observable at a neighborhood level, both through data and the physical change of the neighborhood environment. Most likely data for more than a 10 year span would need to be tracked to observe gentrification on a borough or citywide scale.

Data that can be used to indicate the occurrence of displacement as a result of gentrification are, for the most part, not being collected by the U.S. Census, or other data collection entities. The indicators discussed for Park Slope are useful, but there is a degree of certainty that is not achieved using these data. For example, we can logically acknowledge that the 56% increase in the median household income is not attributable to a deluge of long-term residents suddenly receiving 50% increases in income, or 50% of residents obtaining academic degrees allowing them to have such drastic pay scale increases within 10 years. However, we cannot extrapolate from these data whether the increase in median household income is due to an influx of upper-income residents into the neighborhood, or an extreme and rapid increase in current household income.

Tenure is a helpful indicator pointing to gentrification. For example, from 1991 to 1999, there was a 16% decrease in the average length of tenure (years in current unit) of tenants in Park Slope. Changes in data regarding race could also be an indicator of displacement, however, the method used by the United States Census for categorizing race changed significantly from the 1990 to the 2000 census, so the data are not comparable.<sup>58</sup>

Given the unavailability of direct indicators for measuring displacement, it might be possible for more advanced statistical modeling using a technique such as regression to create new composite indicators for displacement. The indicators discussed above for Park Slope, in addition to those reflecting changes in level of educational attainment, labor force participation, foreclosures, etc., might lead to a clearer, quantitatively justified picture of displacement.<sup>59</sup> A Citizens Housing and Planning report, "Gentrification and Displacement"<sup>60</sup>, performed a regression analysis using indicators it thought relevant to displacement and gentrification. The report claims the net effect of gentrification (as CHPC measured it) is actually a slower rate of low-income persons exiting a neighborhood when that neighborhood is gentrifying. The report points out, however, that when low-income families do leave, it is mainly due to economic pressures.

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<sup>58</sup> The 2000 census, unlike in 1990, allowed participants to identify themselves as more than one race category in the questionnaire. This means that a person categorizing himself as Black in 1990, could have categorized himself in 2000 as Black, Hispanic, Puerto Rican and White if he felt all of these categories represented his heritage. This also means that the percentages of persons in the various race categories add up to well over 100%.

<sup>59</sup> Reports that may be of some use for more data on gentrification are: Hackworth, Jason and Neil Smith. "The Changing State of Gentrification." *Journal of Economic and Social Geography*. Vol. 92, no. 4 (2002):464-477; and Hackworth, Jason. "Inner-city real estate investment, gentrification, and economic recession in New York City." *Environment and Planning*. Vol. A 33, no. 5 (2001).

<sup>60</sup> Citizens Housing and Planning Council, "Gentrification and Displacement," *The Urban Prospect*, Vol. 8, no. 1 (January/February 2002).



Despite the lack of assembled data pointing to gentrification and displacement in New York City neighborhoods, and specifically in Park Slope, a clear and drastic observable change has occurred in the profile of residents, types of stores and restaurants lining the main streets, and new construction and rehabilitation of the housing stock. The influx of capital for the renovation of a dilapidated housing stock, the increased tax base to fund city services, the spending power of new residents (which spurs economic development), and the deconcentration of poverty, are all positive and desirable results of gentrification. However, as the scale of gentrification reaches its fulcrum, and gentrification takes on a momentum, it seems that a tipping occurs from which there is no return. As the pool of abandoned and vacant housing in Park Slope and other gentrifying neighborhoods becomes depleted, the financial pressures on the occupied housing stock have resulted in the displacement of working class families. Because the housing market has become so tight, there is little opportunity for the displaced, lower-income family to find another home in the same neighborhood. Both residents who are voluntarily and involuntarily displaced must leave their neighborhoods, and seek less expensive, often more dilapidated areas in which to live.

A very precarious balance has to be reached by New York City in its residential development policies between incentivizing redevelopment and inciting displacement. As stated by Paul Davidoff, "We have...seen the process of exclusion operating in urban housing markets...too often, the revitalization of city neighborhoods fails to benefit existing residents and frequently it leads to their displacement. It used to be the slum bulldozer that wiped out the poor minorities from certain downtown areas that were in the path of redevelopment, but today it is the real estate tax shelter, the condominium conversion, local tax abatements for rehabilitation, and the discretionary zoning approval for a high rise residential development."<sup>61</sup> In neighborhoods like Park Slope in Brooklyn, gentrification, and to a certain extent, displacement, have already occurred. Furthermore, the proposed upzoning by the Department of City Planning will continue to fuel, and exacerbate this phenomenon. Inclusionary zoning can be used to mitigate the impacts of gentrification and displacement caused by natural market forces, and by DCP's rezoning proposals.

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<sup>61</sup> David J. Brower, Dwight Merriam, and Philip D. Tegeler, eds, *Inclusionary Zoning Moves Downtown* (Chicago: American Planning Association, 1985), 3.

### **III. Rezoning and Upzoning**

The New York City Department of City Planning is proposing to rezone a majority of the neighborhood of Park Slope, Brooklyn. This is one of several rezonings proposed by the City. It serves as a case study of a foregone opportunity by the City to provide affordable housing along with increased density and profit for developers, and to mitigate the impact of gentrification and displacement on current residents.

The Park Slope Rezoning Proposal is generally favorable to residents, community groups, and elected officials as it will ensure that future development fits the scale of the primarily brownstone buildings on neighborhood side streets by creating contextual zones. It will also legally allow for commercial and retail uses along several Park Slope main streets where these uses already exist. The controversy exists with the Department of City Planning's proposal to increase residential density along Fourth Avenue, a main boulevard in Park Slope. Fourth Avenue can most likely absorb the proposed greater density as it is a wide boulevard (120 feet). The Department of City Planning believes that new development of residential buildings with first floor retail or commercial use will most likely follow the upzoning, providing much needed new housing in the Park Slope area. However, the fear of many residents and affordable housing advocates is that the increase in land value attributable to the upzoning will exacerbate the widespread gentrification of Park Slope, and the displacement that follows.

#### **A. Park Slope Rezoning Proposal**

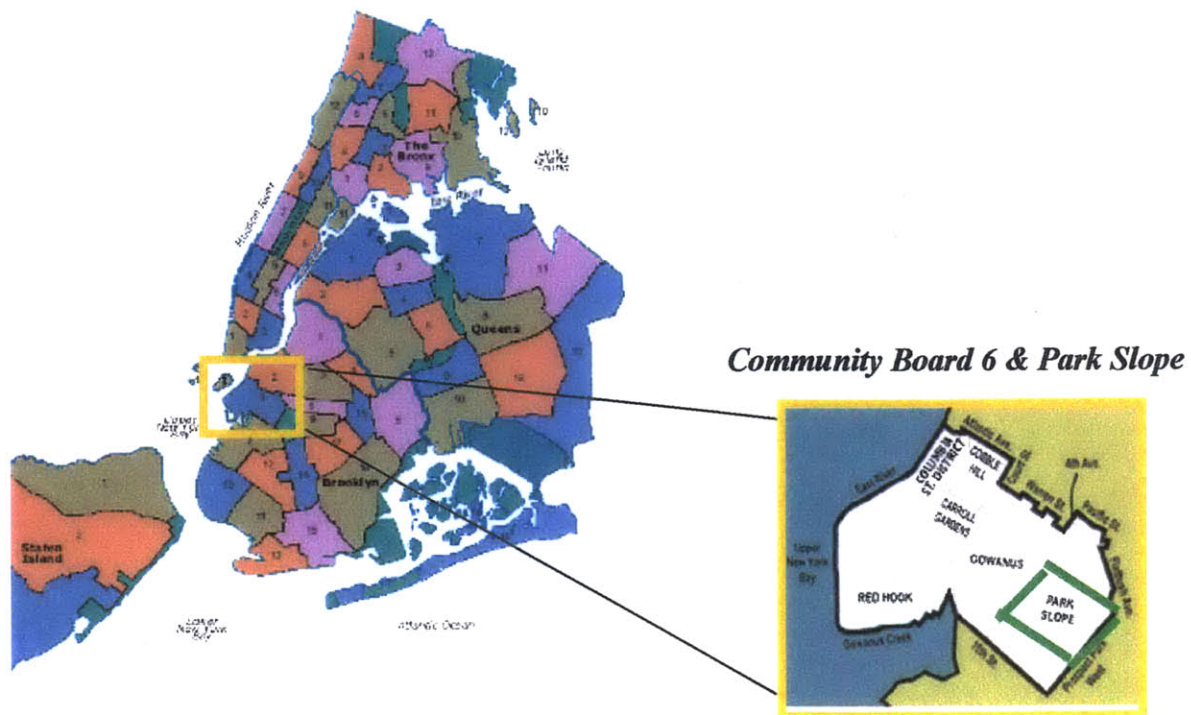
The Park Slope Rezoning Proposal<sup>62</sup> is a proposed amendment to New York City's zoning map. This is the second phase of rezoning for Park Slope, as over 10 years ago the area from Flatbush to Union Street was rezoned. The neighborhood of Park Slope is located in Community Board 6, in Brooklyn, New York (see maps below). For clarification, New York City is divided into five boroughs (Manhattan, Brooklyn, Staten Island, Bronx, and Queens). Each borough is divided into smaller geographic entities, called Community Districts, that are governed by Community Boards.

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<sup>62</sup> New York City Department of City Planning, *Park Slope Rezoning Proposal*, New York: 2002, Database online, Available from <http://www.nyc.gov/html/dcp/html/parkslope/parkslope1.html>, Accessed 14 January 2002.



**Map 1: New York City's Boroughs and Community Boards<sup>63</sup>**



The Park Slope Rezoning Proposal consists of the rezoning of 110 blocks in Park Slope. The Department of City Planning's stated goals for this rezoning are to "preserve the historic scale of the brownstone neighborhoods, and provide increased opportunities for residential and commercial development on Fourth Avenue."<sup>64</sup> For the purposes of this thesis, the Fourth Avenue proposal will be explained.

The current zoning along Fourth Avenue is R6 (Residential 6) between 15<sup>th</sup> and Union Streets (with a commercial overlay of C2-3), and R7A between Union and Warren Streets (with a commercial overlay of C2-4). Please see **Map 2: Park Slope Existing Zoning<sup>65</sup>** below. The proposed upzoning will replace both the R6 and R7A zones on Fourth Avenue with an R8A zone, more than doubling the allowable FAR (Floor Area Ratio<sup>66</sup>) for the R6 zone, and almost certainly resulting in a doubling of land value. Please see **Map 3: Park Slope Proposed Zoning<sup>67</sup>**.

<sup>63</sup> Maps assembled from various website graphics on-line.

<sup>64</sup> New York City Department of City Planning, *Park Slope Rezoning Proposal*.

<sup>65</sup> Ibid.

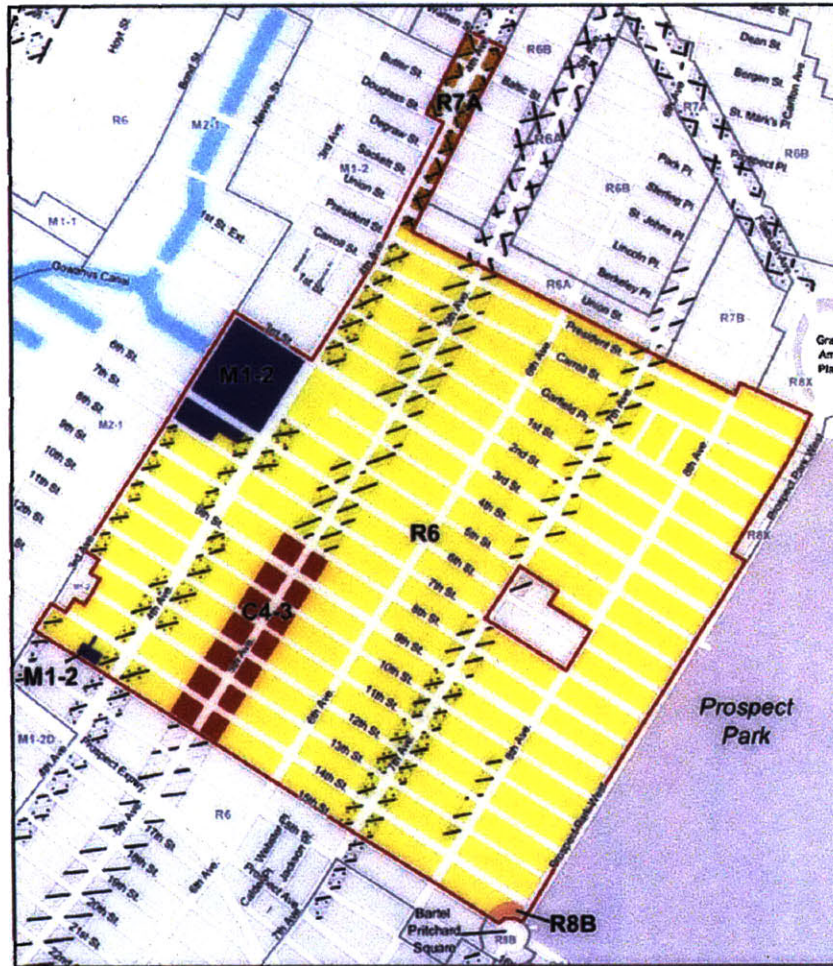
<sup>66</sup> Floor Area Ratio is the ratio of the allowable maximum square footage of a building relative to the lot size.

<sup>67</sup> Ibid.





**Map 2: Park Slope Existing Zoning**



**Legend**

— Rezoning area boundary — R6 Surrounding area zoning district

**Zoning**

R6 R7A R7B R8A R8B C4-3 C4-4 M1-2

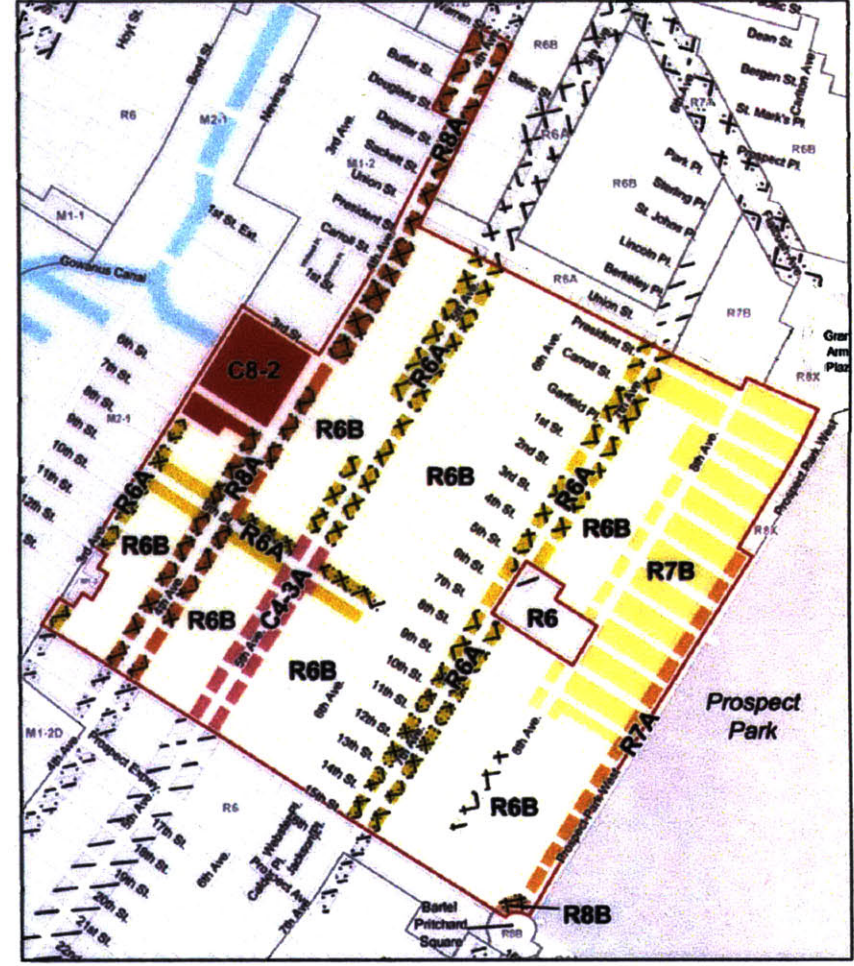
**Commercial Overlays**

C1-3 C1-4 C2-3 C2-4



Department of City Planning / Brooklyn Office / November 2002

**Map 3: Park Slope Proposed Zoning**



**Legend**

— Rezoning area boundary — R6 Surrounding area zoning district

**Proposed Zoning**

R6A R7A R7B R8A R8B C8-2 C4-3A C4-3B C4-3C

**Commercial Overlays**

C1-3 C1-4 C2-3 C2-4



Department of City Planning / Brooklyn Office / January 2003



**Tables 1 and 2** below summarize the maximum Floor Area Ratio, and minimum and maximum base and building heights for both the current zoning of Fourth Avenue, and DCP's upzoning proposal. The maximum building height<sup>68</sup> in the current R6 zone is 5-6 floors, while the R8A maximum building height proposed for the upzoning is 12 floors.

**Table 1: Current Fourth Avenue Zoning**<sup>69</sup>

Zoning District	Maximum Floor Area Ratio (FAR)	Minimum Base Height (approx. # of floors)	Maximum Base Height (approx. # of floors)	Maximum Building Height (approx. # of floors)
R6	2.43	60ft. (5-6 floors)	60ft. (5-6 floors)	60ft. (5-6 floors)
R7A	4.0	40ft. (4 floors)	65ft. (6-7 floors)	80ft. (8 floors)
C2-3	2.0	none	none	none
C2-4	2.0	none	none	none

**Table 2: Proposed Fourth Avenue Zoning**

Zoning District	Maximum Floor Area Ratio (FAR)	Minimum Base Height (approx. # of floors)	Maximum Base Height (approx. # of floors)	Maximum Building Height (approx. # of floors)
R8A	6.02 (6.5 Community Facility)	60ft. (6 floors)	85ft. (8-9 floors)	120ft. (12 floors)
C2-4	2.0	none	none	none

The photographs on the following two pages illustrate some of the current building typologies and uses that can be found along the Fourth Avenue corridor in Park Slope between 15<sup>th</sup> and Warren Streets. One can find a mix of two story commercial buildings, three to five story townhouses and apartment buildings, and mixed use buildings on both Fourth Avenue and the side streets.

The Park Slope Rezoning Proposal was adopted by the New York City Council on April 30<sup>th</sup>, 2003 without an inclusionary zoning amendment. Interesting to note is the first photograph in the section above. These buildings were put up for-sale just days after the Rezoning Proposal was adopted. The arguments of stakeholders impacting the debate surrounding this policy decision, and the opportunities for lessons learned from the Park Slope case study, will be discussed in Chapters 4 and 5.

<sup>68</sup> The R6 zone has no height limit, as it is not a contextual zone. However, given the standard lot sizes in R6 zones, and the small FAR of 2.43, almost all buildings are no higher than 5-6 floors. With the Department of City Planning's Quality Housing Program, a maximum FAR of 3.0 is allowed.

<sup>69</sup> Data from Tables 1 and 2 are from *Park Slope Rezoning Proposal* and meetings with New York City Department of City Planning staff. They were constructed solely for the purposes of this thesis by the author, based on the format of tables in the *Park Slope Rezoning Proposal*.





***Photographs: Fourth Avenue Building Typology and Uses  
Park Slope, Brooklyn<sup>70</sup>***



For Sale only days after upzoning adopted:  
corner of Fourth Ave. & 15<sup>th</sup> St.



Mixed use 3-4 story residential buildings:  
Fourth Ave. between 14<sup>th</sup> & 15<sup>th</sup> Streets



Side street townhouses adjacent to Fourth Ave.:  
11<sup>th</sup> Street between Fourth & Third Aves.



2 story commercial use and 4 story apartment  
buildings:  
Fourth Ave. between 6<sup>th</sup> & 7<sup>th</sup> Streets

<sup>70</sup> All photographs taken by Gretchen Maneval on May 14, 2003.





***Photographs: Fourth Avenue Building Typology and Uses  
Park Slope, Brooklyn***



Side street apartment buildings adjacent to  
Fourth Ave:  
Union St. between Fourth & Fifth Aves.



Gas station on Fourth Ave.:  
corner of Fourth Ave. & 6<sup>th</sup> St.



New construction under current R6 Zoning:  
Fourth Ave. between Carroll & President  
Streets



## **B. Problems with the Park Slope Rezoning Proposal: No Affordable Units and Displacement**

Stimulating the development of new or rehabilitated housing units is vital in the climate of a severe housing shortage in New York City, and is a meritorious goal of the Department of City Planning's upzoning proposal. Unfortunately, if developers respond to the upzoning, they will almost certainly not produce the much needed affordable units desperately needed in Park Slope, or enough market-rate units to allow for the Filtration Theory, historically relied upon by the Department, to work. The Filtration Theory postulates that if enough high-end market residential units are built, the people that are moving into these new units will leave vacant more affordable units for lower-income people. It is debatable whether this approach is successful in other communities, but in an extremely tight and high end housing market such as New York City, and specifically in Park Slope, there is little hope that the recently vacated "affordable units": (1) are affordable; (2) are available to moderate- and lower-income persons; (3) will be a sufficient enough quantity given the demand; and (4) will be in adequate enough condition to be considered decent and safe. The Filtration Theory is also usually based on a citywide scope, and would not be useful at such a micro, neighborhood level.

The upzoning will cause a large increase in land values in Park Slope, which will most likely lead to current land owners selling land or property to developers of high-end housing, (especially if the property is not generating much income as is the case with units affordable to moderate- and lower-income tenants), or taking on the rehabilitation of the properties into higher priced units themselves. Displacement of current tenants in these properties would be a direct result of the redevelopment of property spurred on by this upzoning. The upzoning along Fourth Avenue might also result in secondary displacement, where the increasing land values and new high end housing will prompt other property owners along the side streets to raise their rents, or price of their homes, in response to the newly formed upper-income market. In secondary displacement, current tenants might be either forced out at lease renewal time due to an increase in rent, or outright evicted for illegal reasons.

**Table 3: Housing Need<sup>71</sup>**

**I. Housing Affordability**

	New York City		Brooklyn		Park Slope	
	1990	2000	1990	2000	1990	2000
Population	7,322,564	8,008,278	2,300,664	2,465,326	102,478	105,555
No. of Households	2,816,274	3,021,588	827,679	880,727	43,821	47,291
Severely Crowded Households	5.6%	7.5%	5.6%	7.1%	2.7%	3.1%
Median Monthly Rent	\$637	\$705	\$612	\$672	\$575	\$875
Median Household Income	\$38,909	\$38,293	\$33,509	\$32,135	\$33,897	\$53,090

	New York City		Brooklyn		Park Slope	
	1991	1999	1991	1999	1991	1999
Median % of Household Income Spent for Rent	26.6%	27.4%	27.5%	28.2%	25.9%	22.5% <sup>72</sup>
% of Households with Rent Greater than 50% of Income (Year 2000)	23.7%		26.5%		18.4%	
% of Households with a Severe Housing Affordability or Quality Problem	17.6%	19.9%	21.5%	22.1%	15.9%	16.7%

	New York City		Brooklyn		Park Slope	
	2001		2001		2001	
Repeat Sales Price Indices <sup>73</sup>						
• Condominiums	107.4		106.7		Not Available	
• Single Family Homes	117.7		121.3		Not Available	
• 2-4 Family Homes	121.8		134.4		165.7	
• 5+ Unit Residential Bldgs.	164.5		171.6		Not Available	

<sup>71</sup> Unless otherwise indicated, all data are from Denise Wallin, Michael H. Schill, and Glynis Daniels, *State of New York City's Housing and Neighborhoods 2002*, New York: Furman Center for Real Estate and Urban Policy, New York University, 2002. Tables were constructed solely the purposes of this thesis by the author.

<sup>72</sup> This decrease could be caused by upper-income people moving in to the Park Slope neighborhood.

<sup>73</sup> Shows increase in Median Home Values. "In the indices presented here, market values are expressed relative to 1986, so a 2001 price index of 96 indicates that, on average, properties in 2001 were worth 96% of the value they had in 1986, indicating a decline in average value." Wallin.

## II. Housing Availability

	<b>New York City</b>	<b>Brooklyn</b>	<b>Park Slope</b>
	<b>1991-2001</b>	<b>1991-2001</b>	<b>1991-2001</b>
New Housing Units Issued Certificates of Occupancy	94,275	14,538	283

	<b>New York City</b>		<b>Brooklyn</b>		<b>Park Slope</b>	
	<b>1991</b>	<b>1999</b>	<b>1991</b>	<b>1999</b>	<b>1991</b>	<b>1999</b>
Vacancy rate	3.8%	3.2%	3.1%	3.3%	3.4%	2.2%
Average Length of Tenure (Years in Current Unit)	Not Available	Not Available	Not Available	Not Available	12.3	10.6

	<b>New York City</b>		<b>Brooklyn</b>		<b>Park Slope</b>	
	<b>1990</b>	<b>2000</b>	<b>1990</b>	<b>2000</b>	<b>1990</b>	<b>2000</b>
Population	7,322,564	8,008,278	2,300,664	2,465,326	102,478	105,555
Number of Households	2,816,274	3,021,588	827,679	880,727	43,821	47,291
Severely Crowded Households	5.6%	7.5%	5.6%	7.1%	2.7%	3.1%



## **Chapter 4: New York City and Inclusionary Zoning**

New York City's history of incentive and inclusionary zoning lays a tenuous foundation, but just cause, for a renewed debate. Inclusionary zoning advocates in New York City say that it is a feasible and effective mechanism for ensuring the production of both market-rate and affordable housing, and for combating the negative externalities of gentrification. When combined with other tax incentives, advocates maintain that development will become even more profitable than what the market now bears. Those in opposition say they are reluctant to use zoning for social equity purposes, and that the for-profit sector should not bear the burden of providing a public good. A middle ground in the debate also exists as some developers support inclusionary zoning, but require specific features. The political potency of the stakeholder positions presented in this chapter will ultimately determine whether inclusionary zoning is, in fact, included in New York City's collection of affordable housing development tools.

### **I. The History of Inclusionary Zoning and the Inclusionary Housing Program in New York City**

In 1916, New York City adopted the first Zoning Resolution in the United States, regulating the bulk and height of buildings, and the separation of uses by location. However, the progressiveness of this concept faded as the first comprehensive revision of the Resolution did not take place until 1961. Plaza incentive zoning for Manhattan developers introduced the first use of density bonuses to promote a social good in New York City. But, according to Jerold Kayden's 1978 cost benefit analysis, "incentive zoning greatly exacerbated the overbuilding boom in New York City that gained momentum throughout the late 1960's, creating the oversupply and high vacancy rates of the 1970's. These in turn caused lower real estate tax assessments and occupancy revenues, costing the City over \$8,000,000 in 1973-1974."<sup>74</sup> Apparently, New York City's nascent attempt at incentive zoning had offered too much of an incentive to developers relative to the City's "return". The minimalist and uninviting design of many of the open spaces, or plazas, adjacent to the skyscrapers was also a contributing factor to the perceived failure of the policy. Development had soared, but at a great cost to the City, and without a quality product for the public.

In 1983, the Pratt Institute Center for Community and Environmental Development and the Center for Metropolitan Action at Queens College of the City University of New York proposed an inclusionary zoning and housing trust fund program. These two organizations, along with the CUNY Law School at Queens College, and the American Planning Association, held a legal symposium on urban inclusionary zoning, brining together land use and zoning experts from around the country. In an environment plagued with a dire housing crisis and a population stratifying into extremes of poverty and wealth, combined with the precedent setting Mt. Laurel cases of 1975 and 1983, the Pratt Institute and Metropolitan Action viewed inclusionary zoning as a feasible mechanism for the provision

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<sup>74</sup> Kayden, 1.

of decent, safe, and affordable housing. Just as the Department of City Planning seeks new development in the outer boroughs today, the drafters of the 1983 proposal thought that “City policy should be aimed toward redistributing some of the development pressure to the outer boroughs where redevelopment is desperately needed.”<sup>75</sup> The goals of the 1983 proposal were to zone “equally for the rich and poor,”<sup>76</sup> encourage integrated housing patterns, and to help mitigate the impact of displacement. The proposal mandated an as-of-right 10% set-aside of all new or substantially rehabilitated units for low- and moderate-income housing, as well as for new commercial development. In lieu of the provision of on-site affordable units, developers could build units off-site, or contribute to a City housing trust fund.<sup>77</sup> Developments already using tax abatements like 421 or J-51 were included in the proposal. Pratt also emphasized what the 1983 proposal would not do: propose the increase in zoning density or development rights as a means of generating revenue, thwart development, solve the housing crisis, or require state enabling legislation.<sup>78</sup>

In 1983, the Pratt Institute and Metropolitan Action projected that 3000 housing units per year would be produced given the current rate of market production, adding either 300 affordable units per year, or if every developer chose to contribute to the Housing Trust Fund, \$18 million per year in money set aside for affordable housing development.<sup>79</sup> If Pratt’s predictions had been correct, in 2003, there might have been 6000 more affordable units in New York City, or \$360,000,000 (plus interest!) in a housing trust fund had the inclusionary proposal been enacted.

With a scope much narrower than the citywide inclusionary zoning amendment proposed for New York City in 1983, the Inclusionary Housing Program was adopted in 1987. As stated in Sections 23-90 through 23-943 of the New York City Zoning Resolution, “in the district indicated (R10), an Inclusionary Housing Program is established to preserve and to promote a mixture of low- to upper-income housing within neighborhoods experiencing a shift from mixed to upper-income housing and thus to promote the general welfare.”<sup>80</sup>

The Inclusionary Housing Program is a voluntary, incentive based program allowing a maximum 20% density increase (FAR increased from 10.0 to 12.0) if a developer provides low-income housing. “For each square foot of floor area provided for lower-income housing...the floor area of the development may be increased by the number of square feet cited below.”<sup>81</sup>

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<sup>75</sup> Pratt Institute Center for Community and Environmental Development, and the Center for Metropolitan Action at Queens College, *Inclusionary zoning and Housing Trust Fund: A Proposal For Equitable Development in New York City*, (12 December 1983), 7.

<sup>76</sup> Ibid, 16.

<sup>77</sup> Brower, 5.

<sup>78</sup> Pratt Institute Center for Community and Environmental Development, and the Center for Metropolitan Action at Queens College, 8.

<sup>79</sup> Ibid, 18.

<sup>80</sup> Sec. 23-90 Inclusionary Housing, 5/21/87. *New York City Zoning Resolution*. Database on-line. Available from <http://www.ci.nyc.ny.us/html/dcp/pdf/zone/art02.pdf>. Accessed 13 September 2002.

<sup>81</sup> Ibid.



**Table 4: Inclusionary Housing Program Density Bonuses by Type and Location of Affordable Housing Provided<sup>82</sup>**

<b>Type and Location of Affordable Housing Provided</b>	<b>Density Bonus per Square Foot of Affordable Housing Produced</b>
On-site New Construction	3.7sf
On-site Substantial Rehabilitation	3.2sf
Off-site New Construction (private site)	4.0sf
Off-site New Construction (public site <sup>83</sup> )	2.5sf
Off-site Substantial Rehabilitation (private site)	3.7sf
Off-site Substantial Rehabilitation (public site)	2.0sf
Preservation	2.2sf

As presented in the table above, there are several options for the location and type of affordable housing units produced in the Inclusionary Housing Program. On-site affordable units are located in a new market development and are affordable for the life of increased floor area, with the requirement that low-income units be equally distributed throughout the building. Substantial rehabilitation and off-site new construction has to occur either within same Community District, or in an adjacent Community District within one-half mile of the development receiving the density bonus benefits. An additional requirement for substantially rehabilitated buildings is that they have to have been vacant for three years if they are not publicly owned. Another option for the development of affordable units is preservation, where existing occupied residential or mixed used buildings are rehabilitated and preserved as affordable units. The same location restrictions apply for preservation as with substantial rehabilitation and off-site new construction, in addition to an anti-harassment clause. These preserved units must remain affordable to tenants in compliance with the program's affordability criteria.

According to some New York City market-rate residential developers, the Inclusionary Housing Program is primarily used by developers of low-income housing as a financing tool, as they transfer the inclusionary air rights they receive for the development of the affordable units to market-rate developers for a fee. This fee is then used to develop the affordable units, and the market-rate developer increases the density (and profit) of her property. As noted above, the Inclusionary Air Rights can only be transferred in an R10 zone in the same Community District, or an adjacent Community District within ½ mile of the affordable development. Representatives from the Brooklyn Office of the NYC Department of City Planning have said that about 500 affordable units have been produced under this voluntary inclusionary zoning resolution. Given this track record, they have expressed reticence at the addition of any new inclusionary zoning resolutions for the City.

<sup>82</sup> Data in Table 4 from Sec. 23-90 Inclusionary Housing, 5/21/87, *New York City Zoning Resolution*.

<sup>83</sup> Sec. 23-90 Inclusionary Housing, 5/21/87, *New York City Zoning Resolution*. "Public sites are those made available at a nominal cost."

## II. A Renewed Inclusionary Zoning Debate in New York City

In an introduction to the Pratt and Metropolitan Action's 1983 Inclusionary Zoning proposal, it was stated that "the establishment of Inclusionary Zoning requiring developers to make a provision for affordable housing in their plans...will not happen overnight."<sup>84</sup> Little did they know how true this statement would be, as a full twenty years later a debate regarding the use of inclusionary zoning to provide affordable housing and combat displacement is still alive and well. Most recently, the debate has emerged at the neighborhood level in communities like Park Slope and Greenpoint/Williamsburg in Brooklyn, and East Harlem in Manhattan. This debate began in the environment of a housing crisis, and as numerous community-based affordable housing advocates began responding to various pending proposals by the City to rezone these neighborhoods. Community groups have witnessed extraordinarily rapid gentrification in their neighborhoods over the last several years, and although they are in support of new development, they fear further exacerbation of gentrification to the point where no affordable housing exists for families who have lived in these neighborhoods for generations. The neighborhood debates have spurred a citywide inclusionary zoning initiative, as a coalition of affordable housing groups and City Council Members are advocating the addition of inclusionary zoning to both New York City's discourse on affordable housing policy, and its toolbox of affordable housing development programs.

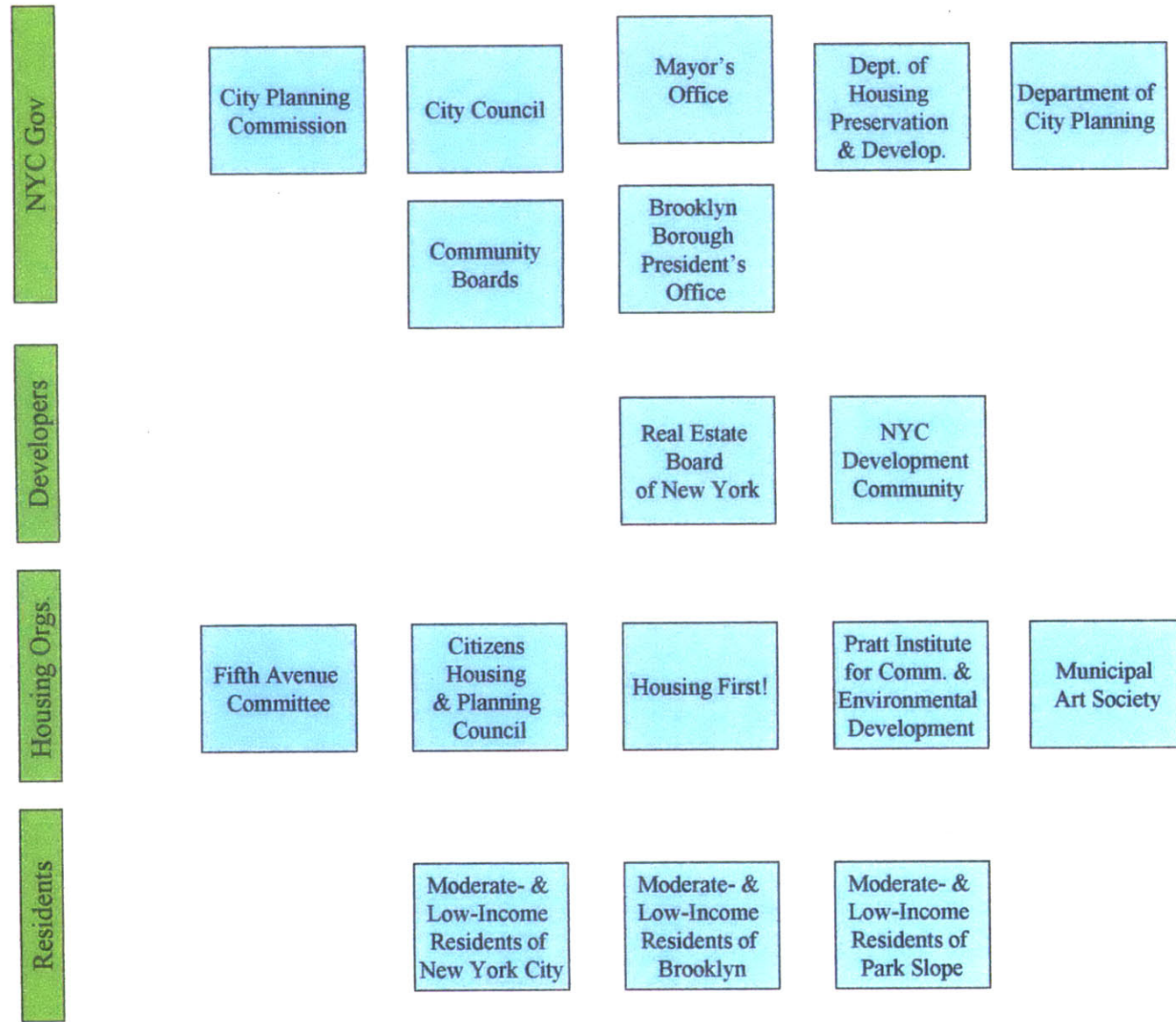
The following section presents the debate surrounding inclusionary zoning in New York City through the perspectives of players actively involved in this discourse. Some parties interviewed have a well developed position on inclusionary zoning, while others are still in the process of articulating their opinion on the matter (either for political reasons, or simply because they became aware of the issue later than others). An important stakeholder not represented directly in this documentation of the debate is the resident being impacted by gentrification, rezoning, and the unaffordability of their housing. It is assumed that for the purposes of this thesis, the resident's interest is represented by elected officials, affordable housing advocates, and New York City government staff (albeit via differing viewpoints).

The organizational chart below shows the various stakeholders in New York City involved in the current inclusionary zoning debate. Again, this chart is not exhaustive of all the interested parties, but is provided to help visually frame the involved players.

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<sup>84</sup> Pratt Institute Center for Community and Environmental Development, and the Center for Metropolitan Action at Queens College, 1.

*Chart 1: NYC Stakeholders for Inclusionary Zoning*





Following a summary of the public approval process for the Park Slope Rezoning Proposal below will be a presentation of several of the stakeholders' thoughts<sup>85</sup> on: gentrification and New York City's housing crisis; legal, economic, social and political arguments for and against inclusionary zoning; and the circumstances/environment in which inclusionary zoning is successful or unsuccessful. Also presented are the stakeholders' policy recommendations regarding inclusionary zoning for New York City in general, relative to the current Inclusionary Housing Program in R10 zones, or for specific neighborhoods (particularly in response to upzoning or rezoning proposals by the Department of City Planning).

#### **A. Uniform Land Use Review Procedure (ULURP) and the Park Slope Rezoning Proposal**

The Department of City Planning's Park Slope Rezoning Proposal, including the upzoning proposal for Fourth Avenue, was discussed in detail in Chapter 3. The debate surrounding the Park Slope Rezoning motivated the relevant stakeholders to articulate their positions regarding the use of inclusionary zoning in New York City. As a case study, the Park Slope Rezoning Proposal approval process can inform future strategies for including inclusionary zoning in New York City.

The approval process for this DCP proposal, along with the debate on including inclusionary zoning along Fourth Avenue, has necessarily taken on the timeline of the Uniform Land Use Review Procedure (ULURP). The ULURP is a public review process in New York City that provides a forum for public comment on proposed zoning changes, and results in city government approval (or disapproval) of the proposed changes (please see *Chart 2: Uniform Land Use Review Procedure (ULURP) for Park Slope Rezoning Proposal*<sup>86</sup>). All of the DCP rezoning proposals will be required to go through this process.

At the start of the ULURP, the application for the Department of City Planning's Park Slope Rezoning Proposal (including the proposed upzoning of Fourth Avenue) was certified as complete by the Department of City Planning on November 18, 2002. Community Board 6 then had 60 days to review and comment on the application, and held a public hearing on Dec. 19<sup>th</sup>, 2002. The Community Board made its recommendations (in favor of the Rezoning Proposal) to the Brooklyn Borough President's office, which had 30 days to review the plan, and submit recommendations to the City Planning Commission. In his recommendations, Brooklyn Borough President Marty Markowitz supported an inclusionary zoning amendment to DCP's proposal. The City Planning Commission's Public Hearing was held on March 5<sup>th</sup>, and the Rezoning was approved by the Commission on April 2<sup>nd</sup>, 2003. Several City Planning Commissioners cast dissenting votes because the Park Slope Rezoning Proposal did

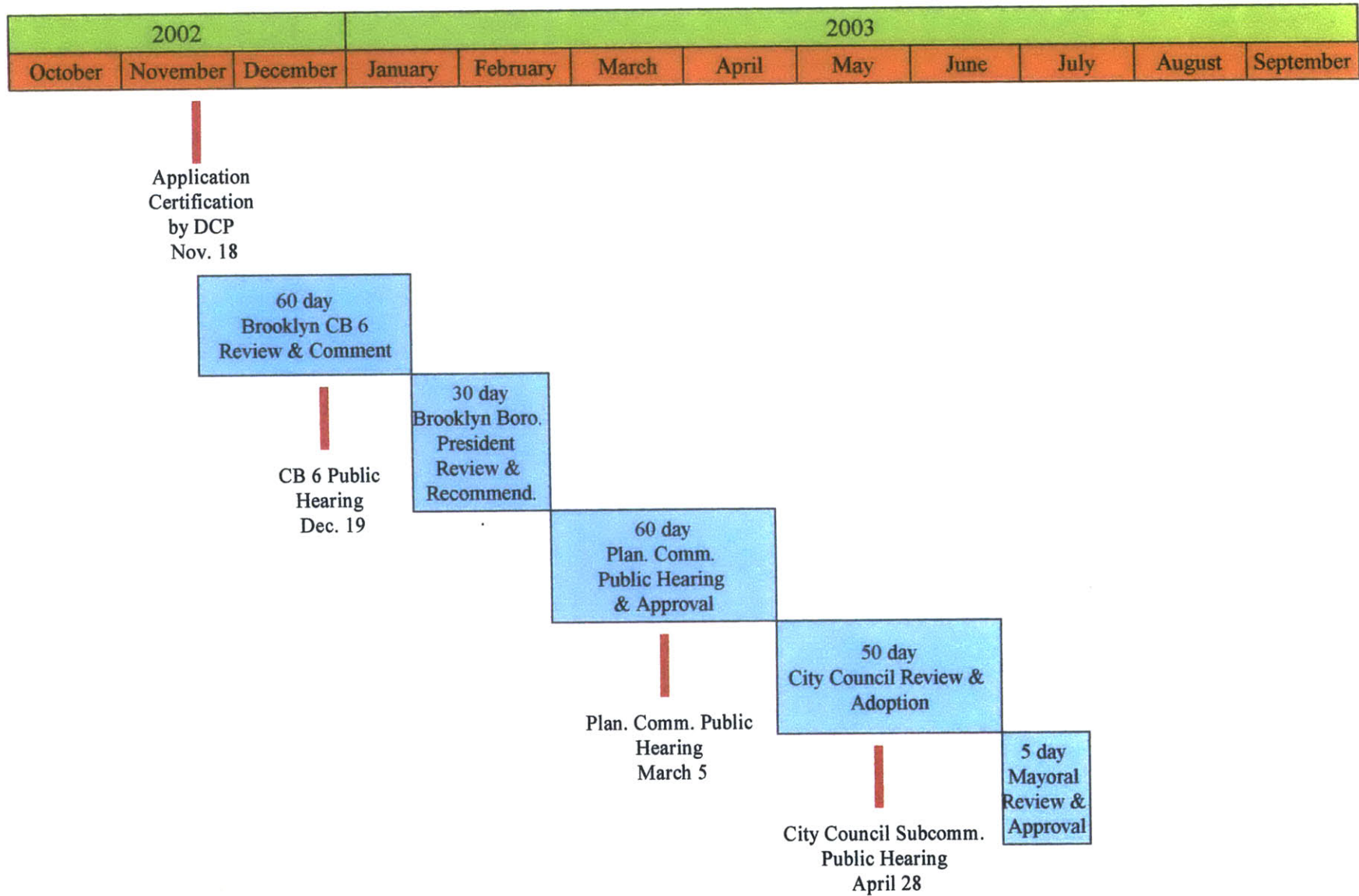
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<sup>85</sup> The "stakeholders' thoughts" are gleaned from individual interviews, policy briefs, position papers, letters, and testimony to various government entities as a part of the ULURP process. Unless explicitly stated otherwise, it is assumed that individual interview responses are representative of the organizations by whom they are employed. All individuals interviewed (unless otherwise noted) gave the author permission to be quoted for the purpose of this thesis.

<sup>86</sup> ULURP timeline from New York City Department of City Planning website, New York: 2002, Database online, Available from <http://www.nyc.gov/html/dcp>, Accessed 15 November 2002.



**Chart 2: Uniform Land Use Review Procedure (ULURP) for  
Park Slope Rezoning Proposal**







not include an amendment for inclusionary zoning, while others voted in favor of the Rezoning, with the caveat that future efforts should be made by the Administration to investigate expansion of the inclusionary housing program in New York City. The Rezoning application next went to the New York City Council, and was subject to a public hearing at the Zoning and Franchise Subcommittee on April 28<sup>th</sup>, 2003.

During the testimony of representatives from the Department of City Planning and the Department of Housing Preservation and Development on the Park Slope Rezoning Proposal, the HPD representative offered \$6 million of government money to develop affordable housing along the Fourth Avenue corridor proposed for upzoning. Following the DCP and HPD testimony, a short break was called before the public testimony was to begin. As rumors spread during the break that a deal had been struck, it was assumed that the \$6 million had been offered in exchange for the Council Members who had originally supported an inclusionary zoning amendment to change their position, and support the Park Slope Rezoning without such an amendment. Most of the Council Members on the Zoning and Franchise Subcommittee left the hearing before the public testimony even began, as did many residents and representatives of community organizations who had planned to testify. The City Council adopted the Park Slope Rezoning without an inclusionary zoning amendment on April 30<sup>th</sup>, 2003. The implications of the interrupted Subcommittee public hearing, and the \$6 million deal, are discussed in Chapter 5.

The citywide inclusionary zoning debate will likely extend beyond the Park Slope Rezoning ULURP process, as a coalition of inclusionary housing advocates around the city will continue to target other rezoning proposals. However, the above explanation of the Park Slope Rezoning Proposal and ULURP process is useful in providing a context for the stakeholders' positions as they are elucidated upon in the following sections of this thesis.

### **B. New York City Department of City Planning**

The Department of City Planning's response to incorporating inclusionary zoning in their proposed upzoning of Fourth Avenue has not been favorable. DCP staff continues to speak out against any new inclusionary zoning provisions, but has not articulated an argument against it with supporting data analyses, or qualitative research. Generally, DCP has said that they do not support the use of zoning to address social issues, and that the R10 Inclusionary Housing Program would not work in the outer boroughs. In an interview for this thesis, Sandy Hornick, Deputy Executive Director, Strategic Planning, DCP, expresses his thoughts on gentrification and inclusionary zoning in New York City.

Hornick explains that the housing crisis in New York City is in part a supply and demand issue: "Because population in the city is rising and housing production has not kept up, there is a housing deficit."<sup>87</sup> Hornick says that there are an enormous number of immigrants coming into the city, primarily low-income, which exacerbates the housing shortage. The inadequate supply relative to demand is also leading to increasing rents, in

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<sup>87</sup> Sandy Hornick, Deputy Executive Director, Strategic Planning, New York City Department of City Planning, interview by Gretchen Maneval, 28 February 2003, Brooklyn, NY.

his opinion. Furthermore, he says that the construction cost per square foot is rising, while the median income is steady, leading to overcrowding. In terms of gentrification, Hornick believes that gentrification and displacement are occurring in specific neighborhoods, but not in New York City as a whole, as there aren't enough affluent people to have a citywide impact. He does not feel that generally this gentrification involves upper-income people pushing out low-income families, but that it is a more subtle gentrification, "\$100,000 incomes being replaced by \$150,000 incomes."<sup>88</sup> As a clarification to this example, Hornick adds that he would "be more than surprised if gentrification had no effect on low-income families."<sup>89</sup>

Legally, Hornick says any inclusionary program would have to be voluntary so that no one challenges it based on the nexus issue. A mandatory program would never work, in his opinion, because he says there has to be a link between the market producer and the problem one is trying to solve. Additionally, he claims there is no cause and effect relationship between the production of market-rate housing and the need for affordable housing. Hornick points out that density bonuses currently used in NYC relate to what the project causes (i.e. public space, infrastructure improvements.) Hornick adds, "This is America, and you're entitled to make a return on your investment;" a mandatory program takes away this right of the developer.<sup>90</sup> When asked about the success of inclusionary zoning precedents around the United States, Hornick says that these mandatory programs work because developers are so desperate to build that they will do anything.

From an economic perspective, Hornick thinks that inclusionary zoning is inherently a tax to get money back from the developer. It was unclear what Hornick's point of view was in terms of looking at inclusionary zoning from a social perspective. First he says he is "not an ideologue about this; one can use zoning where it's legal and when they think it will solve a problem."<sup>91</sup> However, he then adds the caveat that he does not think this is a social issue. He says that zoning policy should not be used as a method to redistribute income. "The public sector has many other tools to use; it shouldn't mandate the private person to solve social problems if he hasn't caused them."<sup>92</sup>

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<sup>88</sup> Ibid.

<sup>89</sup> In an email sent from Gretchen Maneval to Sandy Hornick on 12 May 2003, Maneval requested that Hornick review his quotes used in this thesis for accuracy. Hornick's clarifications and caveats to the quotes will be referred to in the text of this section, as well as in footnotes. Hornick's clarification to this particular quote is "*However, in the neighborhoods where a significant market for new market-rate housing has developed, gentrification has long been underway, with those with the greatest assets outbidding those with lesser, though not necessarily insignificant, assets. The \$100,000 and \$150,000 numbers were merely to represent the process.*"

<sup>90</sup> Ibid. Subsequent Hornick clarification: "*The quote sounds like me but the clause that follows it seems to have something missing. If I remember correctly, the quote was in response to some comment you made, perhaps about unreasonable or excessive profits. The mere fact that complying with some law or regulation is mandatory does not automatically deny a return. Otherwise, no regulation would be permissible.*"

<sup>91</sup> Ibid. Subsequent Hornick clarification: "*I am one of the co-authors of the city's inclusionary housing program.*"

<sup>92</sup> Ibid. Subsequent Hornick clarification: "*I don't know if this is a quote but actually it's the New York courts that said something like this. I think I was citing the courts. By the way, I also said New York City spends*

Politically speaking, Hornick emphasizes that we live in a democracy and the government does what the people want, and that most people aren't asking for inclusionary zoning. He believes that when land use policy becomes a tax, it's not valid.

Regarding the notion that the public sector should recapture profits that private land owners might make as a result of the proposed upzoning on Fourth Avenue, Hornick says, "City governments downzone all the time, take away development rights, and they don't pay landowners anything; we therefore can't hold developers responsible for giving money back to us when we increase the value of the land."<sup>93</sup> Subsequently, Hornick added a caveat to the aforementioned quote: "Before advocates assert, as you did at the City Council hearing, that local governments have the right to recapture, through zoning, increases in value that result from zoning changes as a means to assist financially strapped local governments in providing affordable housing, consideration should be given to corresponding fiscal implications of compensating land owners when local governments downzone property. Would the cost of compensating property owners for a downzoning of 0.43 over large areas of Park Slope and recapturing some or all of the increased value on Fourth Avenue leave the City with significant resources for housing?"<sup>94</sup>

The Department of City Planning has expressed that its New York City R10 Inclusionary Housing Program has been less successful than they had hoped for. As Amanda Burden, New York City DCP Director, was quoted in an April, 2003 New York Times article, "Inclusionary zoning has been tried in the most dense residential zones in Manhattan...but has failed to produce many moderately priced apartments."<sup>95</sup> However, Hornick says that there are three real gains of the R10 program: 500 units of affordable housing built; units are affordable in perpetuity (for life of the market property); and 2000 more market-rate units were built because of the extra density allowed. Hornick goes on to say that the difference between a Manhattan and Park Slope inclusionary zoning program would be that Manhattan gained both market and affordable housing, while Park Slope would be trading market for affordable. "The (R10) program won't work in Brooklyn...there are two buildings that have been built in Brooklyn Heights where the R10 Inclusionary Program is applicable, and neither building used the program because it didn't make sense to them."<sup>96</sup>

Hornick stands by the Department of City Planning's argument that the Fourth Avenue upzoning proposal will serve to dampen housing prices relative to the levels likely

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*more of its own fiscal resources on affordable housing issues than all the other municipalities in the nation combined."*

<sup>93</sup> Ibid. Subsequent Hornick clarification: "Perhaps it would be clearer to say that: Zoning amendments do not carry with them an obligation on the part of the government to adjust land values to compensate for gains in losses in value (as long as the courts hold that sufficient value remains to avoid a taking)."

<sup>94</sup> Hornick clarification in email dated 12 May 2003 sent to Gretchen Maneval.

<sup>95</sup> Diane Cardwell, "Highs and Lows in Park Slope Rezoning Plan", *New York Times*, 2 April 2003, sec. D, p. 5.

<sup>96</sup> Hornick. Subsequent Hornick clarification: "Much of the conversation was a response to why the current program should not be extended to Fourth Avenue. The two buildings in Brooklyn Heights are merely cited as a part of the evidence of why this is so."

without the upzoning: “if 1000 new units are produced because of the upzoning, prices will go down, and if units are produced across the city (for example 20,000 per year), then one could see a real difference in housing prices relative to the same population.”<sup>97</sup> He does not, however, believe that the trickle down approach works for affordable housing, as “low-income households don’t support ongoing maintenance and operation.”<sup>98</sup>

Hornick says that Park Slope is desperate for housing units due to displacement and rising costs, and that the Fifth Avenue Committee (FAC) inclusionary housing proposal<sup>99</sup> is really about steering subsidies into Park Slope and away from other neighborhoods serviced by other affordable housing developers. Furthermore, he says that combining an inclusionary program with other subsidies might work, but that there is not enough subsidy to go around, effectively “stealing the subsidy money away from areas like Sunset Park or Central Brooklyn. If there isn’t enough subsidy money to go around, then all developments cannot achieve the maximum FAR. This results in fewer units being produced and fewer affluent households served by new development. These unserved households would then be forced to compete for, and bid up the price of, the existing housing stock.”<sup>100</sup>

### **C. New York City Council**

#### ***Council Member David Yassky***

Council Member David Yassky represents District 33 in Brooklyn, including most of the Greenpoint/Williamsburg waterfront area proposed for rezoning by the Department of City Planning. In a November 2002 letter from David Yassky to New York City Deputy Mayor Doctoroff, Yassky suggests that as a part of the revitalization proposal for Greenpoint/Williamsburg waterfront, housing and open space have to be considered. The appropriate levels of height and density for the area are also an issue. “While market-rate units are a welcome addition to the city’s depleted housing stock, most residents of Greenpoint-Williamsburg will be unable to afford these apartments. Indeed, some argue that development of luxury housing on the waterfront will drive up rents and housing prices throughout the Greenpoint-Williamsburg area, forcing out low-and middle-income families whose apartments are not subject to rent regulation.”<sup>101</sup>

Zoë Segal-Reichlin, Legislative Aide/Community Liaison for Yassky, was interviewed for this thesis about her thoughts on gentrification in Brooklyn and the use of inclusionary zoning in NYC as a policy tool to provide affordable housing units. Segal-Reichlin believes that gentrification is occurring in Brooklyn, especially in Yassky’s district, which she points out has close proximity to Manhattan, good transportation infrastructure, and a desirable housing stock.

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid. *Subsequent Hornick clarification: “I actually wrote an article on this subject for City Limits back in 1983.”*

<sup>99</sup> A detailed description of the Fifth Avenue Committee’s inclusionary housing proposal is presented in Chapter 4, section D. Housing Organizations, *Fifth Avenue Committee*.

<sup>100</sup> Hornick. *(quote includes subsequent clarification)*.

<sup>101</sup> David Yassky, *Letter to New York City Deputy Mayor Daniel Doctoroff*, November 2002.

Addressing the legality of inclusionary zoning, Segal-Reichlin argues that a nexus does exist as new development often leads to secondary displacement at the very least, if not direct displacement. In regards to the economic feasibility of a density bonus, she says, “if you can build two more stories, the development costs should go down; therefore the income that needs to be generated can be less from a certain percentage of units.”<sup>102</sup> Segal-Reichlin emphasizes that whatever incentive program is developed, too much of a windfall should not be received by developers. In response to the Department of City Planning’s trickle-down policy to provide affordable housing, Segal-Reichlin says, “There is such a deficiency of affordable housing that just creating market units isn’t going to result in a trickle down of more affordable units.”<sup>103</sup> From a social standpoint, Segal-Reichlin asserts that a mixed economy is the most desirable for New York City neighborhoods.

Segal-Reichlin says that from an elected official’s point of view, Yassky wants to support his constituency. She maintains that Greenpoint/Williamsburg is an example of an environment that is perfect for the use of inclusionary zoning as “there is a core lower-income base made up of many working class and ethnically diverse families who have lived in the neighborhood for sixty to seventy years.”<sup>104</sup> She says with the proposed rezoning by DCP to change from manufacturing to residential along the waterfront, many of the long-time residents could be in jeopardy of being forced from their homes due to an increase in rents and property value. Segal-Reichlin also says the community doesn’t want more than four stories allowed under the rezoning, while developers have suggested up to twenty stories. She thinks inclusionary zoning could be a good compromise, as residents might be willing to allow more height than four stories in exchange for developers providing affordable units.

Segal-Reichlin points out that any inclusionary zoning proposal must be structured in a way that is profitable for developers so they will take advantage of it. It should also be appropriate to the location where it applies she says, unlike in Manhattan where land costs are restrictively high. She does think NYC’s current Inclusionary Housing Program has met with mild success, as 50% of new projects have taken advantage of the program, and over 450 units of affordable housing have been created. She says another success of the current program is that it has prompted mixed-income living within new developments. Segal-Reichlin thinks any inclusionary zoning should be mappable, and will work the best in areas where DCP is already proposing a change in zoning (either an increase in density, or a change in use).

In the November 2002 letter to Deputy Mayor Doctoroff, among other policy recommendations to produce affordable housing units (including tax incentives, tax increment financing, and a conversion fee contributing to an affordable housing development fund), Yassky advocates a Zoning Incentive similar to that of the current

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<sup>102</sup> Zoë Segal-Reichlin, Legislative Director for Council Member David Yassky, interview by Gretchen Maneval, 4 March 2003, Brooklyn, NY.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

R10 zone Inclusionary Housing Program, without restrictions on using other available incentives such as 4% tax credits.

Yassky and staff have also drafted a policy paper entitled, “Affordable Housing Zoning Bonus.” The Yassky paper is in response to the fact that “Mayor [Bloomberg] proposes rezoning large areas of unused manufacturing land for residential use but has not put forward plans to ensure that New Yorkers of modest means can afford to live in some of the new developments created from these massive, city-sponsored rezoning efforts.”<sup>105</sup> The paper goes on to explain that land zoned for residential use is more valuable than land zoned for manufacturing, and therefore, the DCP proposed rezoning is giving a windfall to landowners. Yassky thinks this large windfall allows flexibility to include a voluntary program for developers to get 20% more total units if half of the additional units are affordable to lower-income families (without the aid of government subsidy). If an even greater percentage of units were made affordable by the developers, government assistance to subsidize the project would be made available to them.

Yassky’s position in support of inclusionary zoning did not impact the Park Slope Rezoning Proposal, but will hopefully prove more effective in getting an Affordable Housing Zoning Bonus included in DCP’s Greenpoint/Williamsburg Rezoning Proposal.

#### ***Council Member Bill deBlasio***

Council Member Bill deBlasio represents District 39 in Brooklyn, including part of the Park Slope neighborhood. According to deBlasio, “There are a lot of good elements to the [Park Slope Rezoning] plan and we should keep moving forward, but I think it could be improved by explicitly creating incentives to build affordable housing.”<sup>106</sup>

A policy paper drafted by deBlasio and his staff entitled “A Pilot Affordable Housing Zoning Bonus on Fourth Avenue” prescribes a strategy for incorporating affordable housing into new developments along Fourth Avenue. The deBlasio paper proposes that “the [City] Council immediately introduces a resolution to create the “affordable housing zoning bonus district” on Fourth Avenue. This would be done by rezoning Fourth Avenue to R8A, along with a simultaneous amendment to the Zoning Resolution (adding a Section 23-146b) creating an optional provision for certain R8A districts that would apply to the portions of Fourth Avenue covered by the Park Slope Rezoning.”<sup>107</sup> The current Park Slope Rezoning Proposal by DCP would have to be amended so that for the time being, Fourth Avenue is zoned to only R7A, allowing room for an increase in density with the future affordable housing zoning bonus. Fourth Avenue would have a 4.0 FAR as-of-right (with contextual features appropriate for wide streets), which is equal to R7A FAR. Then, for each square foot of affordable housing included in a new development, a developer could build an additional square foot of market-rate housing, up to 6.02 FAR (equal to R8A) from the as-of-right R7A FAR. The Department of City Planning, the New York City Council, or the Brooklyn Borough President could apply for this R8A remapping and text change.

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<sup>105</sup> David Yassky, *Affordable Housing Zoning Bonus*, 2002.

<sup>106</sup> Cardwell, 5.

<sup>107</sup> Bill deBlasio, *A Pilot Affordable Housing Zoning Bonus Program on Fourth Avenue*, February 2003.

Bill deBlasio's paper suggests the zoning bonus could be used in combination with the NYC New Marketplace initiatives, as well as the City's other current incentive and financing programs. The paper recommends a three year pilot period, with a "sunset after six years unless extended permanently or for a specified term through a new text amendment of the original text amendment. If the program is not extended, the area will automatically revert to R8A without any obligations to provide affordable housing. During this [three year] trial period, the Council and City Planning will work together to create and approve a citywide Affordable Housing Zoning Bonus program." The table below presents the ratio of market to affordable units, maximum FAR, and the height of Fourth Avenue's current zoning of R6 and proposed zoning changes in deBlasio's pilot program.

**Table 5: Summary of Bill deBlasio Proposal<sup>108</sup>**

<b>Zoning</b>	<b>Market:Affordable Ratio</b>	<b>Maximum FAR</b>	<b>Est. "Normal" Max. Bldg. Height</b>
R6 (current zoning)	100:0	3.0	6-7 stories
R7A (temporary zoning)	100:0	4.0	8-9 stories
Affordable Housing Bonus District, no affordable units	100:0	4.0	8-9 stories
Affordable Housing Bonus District, developer utilizes 50% of potential bonus	90:10	5.0	9-10 stories
Affordable Housing Bonus District, developer utilizes maximum bonus	83:17	6.02	10-12 stories

Unfortunately, given the \$6 million dollar deal struck with HPD, deBlasio's proposal became moot at the New York City Council's Zoning and Franchise Subcommittee Public Hearing.

#### **D. Brooklyn Borough President's Office**

Richard Bearak, Deputy Director of Zoning and Housing Development for the Brooklyn Borough President, offers insight and specific policy recommendations for the application of inclusionary zoning to New York City in a February, 2003 interview.<sup>109</sup> In terms of gentrification, Bearak thinks that Brooklyn has experienced a subtle, upward trend in income, beginning in the 1960's in Brooklyn Heights. He says that upper-

<sup>108</sup> deBlasio, *A Pilot Affordable Housing Zoning Bonus Program on Fourth Avenue*.

<sup>109</sup> Richard Bearak's position does not necessarily reflect that of the Brooklyn Borough President Marty Markowitz, although Bearak is one of the Borough President's key advisors on zoning and housing development issues.

income people are moving into predominantly working class and lower-income Brooklyn neighborhoods from both Manhattan, and more expensive neighborhoods in Brooklyn.

Looking at inclusionary zoning from an economic perspective, Bearak supports the City finding creative ways to provide more affordable housing due to its limited resources, but he believes it takes a certain land value to allow inclusionary zoning to work. He says the challenge is determining the value threshold (what developers are willing to pay). He points out that early owners of rezoned or upzoned land would make a large windfall on the increased value of their land, but as time goes on, this windfall would become less. Bearak is concerned that the more restrictions that are placed on the developer, the more the purchaser will be impacted.

Bearak stresses the importance of socioeconomic diversity in neighborhoods, and of not concentrating lower-income persons into a few neighborhoods. Diversity of workers is also important in Bearak's point of view for the health of New York City's economy.

Politically, Bearak says that New York City government has a long policy of allowing the market to operate *laissez-faire*. Furthermore, he says the "City tends to subsidize neighborhoods where the market is not good."<sup>110</sup> Therefore, the question for the city is "should...they be channeling funds to areas where the market is already operating successfully?"<sup>111</sup>

Bearak thinks the ideal environments in which inclusionary zoning would be successful are areas that are underbuilt, where a dramatic increase in zoning occurs, or where a combination of the two is present. At the same time he says, "the market has to want to go there."<sup>112</sup> Bearak says that in effect, a sliding scale density bonus has existed, as the City only has height factor zoning in some areas, and therefore if the developer builds taller, it gives her more floor area. However, he says that most builders opt to build at low FARs, and not take advantage of the *de facto* density bonus. Bearak offers Nehemiah housing as an example of the trend of underbuilding in New York City. He also says that often times developers can't afford the upfront costs of big projects, and so don't maximize the building envelope, but still make an adequate profit. Bearak thinks that the impact on displacement of units developed under a voluntary inclusionary zoning program will be marginal, and that the income that it is financially feasible to target for the affordable units will allow for only moderate-income families to purchase units, and not low-income families.

## **E. Housing Organizations**

### ***Citizens Housing and Planning Council***

The Citizens Housing and Planning Council is a nonpartisan housing policy research and advocacy organization in New York City. Their September 2002 report, "A Proposal to Enhance Tax and Zoning Incentives for New Housing Production," outlines

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<sup>110</sup> Richard Bearak, Deputy Director of Zoning and Housing Development for the Brooklyn Borough President, interview by Gretchen Maneval, 31 January 2003, Brooklyn, NY.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.



recommendations for more effective, and perhaps combined use of New York City's 421a tax exemption<sup>113</sup> and Inclusionary Housing Program to produce affordable housing. Frank Braconi, CHPC Executive Director, and Martha Galvez, Policy Analyst, provide insight on their views of gentrification, and inclusionary zoning as a policy for providing affordable housing.

In an interview with Frank Braconi, he says that he does believe gentrification is occurring in New York City, but that gentrification brings "economic vitality to a community. I would much rather be in urban environments of gentrification."<sup>114</sup> Braconi adds that displacement can be an adverse side effect of gentrification, but that it is not inherently a part of it. "When an urban neighborhood has a shift in socioeconomic state, either people can be displaced or the whole community can be lifted up."<sup>115</sup> Braconi believes that with a rent regulated housing stock, and no more urban renewal policies, direct displacement in New York City is a thing of the past. He says now there is mostly secondary displacement caused by rising rents, but that rent regulation mitigates this trend. Based on the CHPC study and report "Gentrification and Displacement", Braconi says that the net effect of gentrification as CHPC measured it is a slower rate of low-income persons exiting from a neighborhood when that neighborhood is gentrifying. However, he says when low-income families do leave, economic pressures are the main reason. According to Braconi, the report shows that while economic pressures in gentrifying neighborhoods may increase variables like rising rents, other variables lessen pressures for people leaving, such as a decrease in crime and deterioration of buildings, as well as an improvement of services.

Legally, Braconi says that there should not be a problem with an inclusionary zoning program if a bonus is offered to developers who include affordable units. For economic viability, Braconi thinks any program has to offer a density increase, or it will be "just another social requirement put on the producer."<sup>116</sup> Martha Galvez offers that one should look at whether the density bonus cancels out the lost income from producing affordable versus market-rate units. Galvez emphasizes that an inclusionary housing bonus might become a moot point if someone does not figure out why developers aren't building to the maximum envelope in many parts of the city.

Braconi stresses that inclusionary zoning is never going to be the primary tool for promoting diversity, but that it can play a role. "Part of the appeal of dense urban neighborhoods is diversity, and development policy should deliberately plan for this

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<sup>113</sup> "This program [421a] offers automatic property tax exemptions for up to 25 years for all new multi-family housing built in the outer boroughs and parts of Manhattan. It also offers tax exemptions for new residential buildings built in prime Manhattan locations if low-income apartments are incorporated into the project or financed off-site." Citizens Housing and Planning Council, *A Proposal to Enhance Tax and Zoning Incentives for New Housing Production*, September 2002: p. 2.

<sup>114</sup> Frank Braconi, Citizens Housing and Planning Council Executive Director, interview by Gretchen Maneval, 13 February 2003, New York, NY.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

diversity. The social environment of creativity and culture is what cities are selling today, and they have to provide an environment conducive to these values.”<sup>117</sup>

Braconi thinks that inclusionary zoning is a tool to direct density for the enhancement of civic life, not the deterioration of it. He says that one of the problems in New York City is that because communities are unwilling to accept density “where it should be, density explodes in neighborhoods where it can be. This has led to thousands of families living in buildings illegally and in overcrowded conditions.”<sup>118</sup> Braconi believes that communities don’t want more density in general, so that when rezoning or development actions are going through the political process, applying inclusionary zoning to provide affordable units can encourage communities to accept more density.

The Citizens Housing and Planning Council 2002 policy paper, “A Proposal to Enhance Tax and Zoning Incentives for New Housing Production” was written in the context of what CHPC deems to be low levels of new construction in the 1990’s (“8,250 units per year”), combined with a growing population, which have lead to increased housing prices and “illegal and substandard dwellings.”<sup>119</sup> The report reviews the R10 Inclusionary Housing Program, and recommends several changes, including its expansion to R6, R7, and R8 zones, with a maximum FAR bonus of 20% (for both residential and commercial buildings), in exchange for the provision of affordable units. CHPC suggests adjusting bonus formulas so developers can combine low- and moderate-income units in a way that allows them to maximize the FAR bonus. Other suggestions include allowing developers to cluster affordable units in a building to maximize the market value of the density bonus, and permitting entities other than non-profits to manage the affordable units. Financial recommendations include removing “the restriction barring developments receiving real estate tax exemptions or operating assistance from receiving Inclusionary Housing floor area bonuses,”<sup>120</sup> and allowing affordable unit rents to pay debt service for the new development. In a May 2003 presentation to Hunter College graduate students, Braconi suggested that it seems as if the elements in New York City’s current Inclusionary Housing Program were purposefully structured in a way that inhibits the success of the program.

In addition to the specific policy recommendations of the Citizens Housing and Planning Council listed above, Braconi believes that there should be selective mapping of inclusionary zoning because there exists in New York City a diversity of markets, and he says different neighborhoods have different capacities to support the policy. Galvez concurs, saying that it would be politically impossible to do a “blanket inclusionary zoning policy.”<sup>121</sup> Related to the above argument regarding density, Braconi thinks a great opportunity to use inclusionary zoning lies with the rezoning proposal of the

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<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Citizens Housing and Planning Council, *A Proposal to Enhance Tax and Zoning Incentives for New Housing Production*, September 2002: p. 2.

<sup>120</sup> Citizens Housing and Planning Council, 4.

<sup>121</sup> Martha Galvez, Citizens Housing and Planning Council Policy Analyst, interview by Gretchen Maneval, 13 February 2003, New York, NY.

industrial areas of West Brooklyn. Galvez also suggests having communities push through an inclusionary type program with their 197a Comprehensive Plans.

### ***Fifth Avenue Committee***

As rumors of the Department of City Planning's proposal to upzone the Fourth Avenue corridor in Park Slope between Warren and 15<sup>th</sup> Streets spread during the summer of 2002, community organizations began to reflect on the impact such an upzoning might have on low- and moderate-income residents. The Fifth Avenue Committee, a community development corporation established in 1978 that builds and manages affordable housing in Park Slope, became concerned about the burden of an increase in rents, and the displacement that might occur as a result of the proposed upzoning in this already gentrifying neighborhood. Working with the Pratt Institute Center for Community and Environmental Development, Jaye Fox of Jaye Fox Consulting, staff from the Brooklyn Borough President's office, and Council Members Yassky and deBlasio and their staff, the Fifth Avenue Committee drafted several options and strategies for including inclusionary zoning either as a part of, or subsequent to, the upzoning of Fourth Avenue in Park Slope. Viewing the Fourth Avenue proposal as an opportunity for setting a citywide precedent for inclusionary zoning, the Fifth Avenue Committee has also reached out to citywide organizations, stimulating the larger New York City debate.

Throughout the ULURP process, the Fifth Avenue Committee, working in combination with aforementioned groups, has presented the status of affordable housing need and displacement in Park Slope, researched inclusionary zoning precedents from around the country, and architecturally and financially modeled possible inclusionary zoning scenarios.

The Fifth Avenue Committee is concerned that the negative implications of gentrification, including displacement, that are already occurring in Park Slope will be exacerbated and accelerated as the result of the proposed upzoning of Fourth Avenue by the Department of City Planning. FAC believes that the upzoning will encourage primary displacement due to site assembly by developers. FAC says that after developers assemble sites, they could easily demolish small buildings not subject to rent regulation by evicting tenants, or simply raising rents, forcing tenants to leave. For larger buildings subject to rent regulation, buyouts<sup>122</sup> and harassment of tenants might occur as has been witnessed by FAC through their work with the Park Slope community. Furthermore, FAC estimates that the market rent for new units built in response to the upzoning would be approximately "\$1800...for a two-bedroom apartment, and \$2100 for a three-bedroom. To afford the \$1800 for a two-bedroom apartment, a family would need to earn \$72,000 per year. However, the median income of tenants in Community Board Six is less than \$30,000 per year. Fewer than 25% of current community residents would be able to afford the new housing."<sup>123</sup> According to FAC, secondary displacement will most likely also occur as the market commands higher rents and prices for new property, and

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<sup>122</sup> A tenant buyout is when a landlord or owner offers a tenant a certain amount of money to leave the apartment. For example, the owner might offer the tenant \$5000, which can seem like a large sum to a low-income person, but is a small sum relative to the owner or developer's budget. The sum is rarely enough for the tenant to afford a new apartment, and often leaves the person or family homeless.

<sup>123</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope*, Brooklyn, November 2002: p. 4.

Fourth Avenue becomes an attractive place for upper- and middle-income people to live. Rent on the side streets adjacent to Fourth Avenue will likely rise, either forcing families to pay an even higher percentage of their incomes for rent, or to outright leave their homes.

Brad Lander, Executive Director of the Fifth Avenue Committee believes that inclusionary zoning is a “cost effective, economically viable way to provide affordable housing.”<sup>124</sup> He points out that in the case of Fourth Avenue, where landowners are already receiving a substantial windfall from the upzoning, inclusionary zoning is an especially reasonable option.

Lander does emphasize the importance of the Department of City Housing’s upzoning goal to provide as much density as possible, allowing the market to produce more housing. In his opinion, any inclusionary zoning provision would have to ensure that it wouldn’t inhibit development. However, he thinks the Department of City Planning’s laissez-faire policy for the provision of affordable housing is not a sound strategy, and that it is really ideology rather than economic thinking that is driving their position. Joan Byron of the Pratt Institute says the City’s supply-side argument needs to be countered with “the case that just upzoning will probably escalate the prices of existing housing in the area, and will not add enough units to change the arithmetic of supply and demand. If upzoning is to avoid hurting people who need affordable housing, affirmative steps must be taken to encourage the creation of new affordable units.”<sup>125</sup> Lander adds that if integrated and diverse communities are something that we as a society and residents of New York City value, then we cannot rely on the markets to bear this out.

When speaking to the political viability of an inclusionary zoning ordinance, Lander thinks that a voluntary program would work the best because if communities want to use it, they can take advantage of the program, but if it doesn’t make sense for the specific neighborhood or district, they can disregard it. Lander says a mandatory program that is mappable, while still viable politically, would also allow for a community to decide its own vision of its future housing stock. Lander cautions that having a mandatory program applicable to all of New York City would be difficult to achieve politically.

According to Lander, some New York City elected officials are claiming that zoning should not be used for social purposes. He adds that Deputy Mayor Doctoroff and Mayor Bloomberg have a vision of the waterfront that includes creating high property values. They are apparently depending on an increased tax base resulting from market-rate development to provide funding for City programs that subsidize affordable housing development.

Lander suggests that the following environment is appropriate for the advancement of an inclusionary zoning program: a strong market so that market-rate units are profitable enough to support the affordable units in a new development; rezoning that provides a

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<sup>124</sup> Brad Lander, Fifth Avenue Committee Executive Director, interview by Gretchen Maneval, 20 February 2003, Brooklyn, NY.

<sup>125</sup> Email message from Joan Byron (Pratt Institute) to Brad Lander (Fifth Avenue Committee) 12 August 2002.

sufficient profit margin for developers; a strong voice for diverse communities; and the existence of a housing crisis. At this time, many neighborhoods in New York City could claim these characteristics.

Ideally, Lander thinks the best version of a citywide inclusionary housing program would have a unit threshold above which the inclusion of affordable housing would be mandatory in new developments. Such a mechanism would be more equitable as it would apply to every developer, but it would also mean upzoning most of NYC by 20%, which would not be politically practical. Lander emphasizes that the environmental impacts would have to be examined and neighborhood opinion carefully considered with such a program. The next best option would be to apply the existing Inclusionary Housing Program to zones R6 through R9 citywide, with a voluntary bonus provision, and to allow the program to be combined with city tax incentive and abatement programs (unlike the current R10 version). He says that “unfortunately, the current inclusionary zoning program is not only inapplicable outside of Manhattan, it also creates a bad precedent for thinking about models elsewhere in New York City.”<sup>126</sup>

A 90/10 inclusionary model proposed by Council Member Yassky and his staff would be good for homeownership, Lander says, as there are no other financial incentives to build affordable for-sale units. He also cites a sliding scale model put forth by Brooklyn Borough President staff. Lander prefers a general 20% density bonus for 20% affordability model because it is clear for everyone involved, including architects. He believes that almost every developer would opt for the 20% density bonus, and would combine this with tax-exempt bond financing at 4%.

The Fifth Avenue Committee’s inclusionary zoning proposal for Fourth Avenue in response to the Department of City Planning’s upzoning “is paying heed to political palatability while ensuring the production of affordable units.”<sup>127</sup> FAC supports the general upzoning, because Lander believes Fourth Avenue can support increased density, and says the production of more housing units is always welcome. However, the Fifth Avenue Committee is urging the Department of City Planning not to give an outright windfall that more than doubles the value of property for landowners, without ensuring that developers provide affordable units in their new residential developments. FAC estimates six “soft sites” (sites that could be more easily assembled and demolished for new construction) along the section of Fourth Avenue proposed for upzoning. Lander asserts that “if new buildings on these sites contained an average of 75 units, there could be 450 new units of housing created in the next 5-10 years.”<sup>128</sup>

During the first six months of the Park Slope Rezoning ULURP process, the Fifth Avenue Committee put forth two variations of what they call an “Affordable Housing Bonus” proposal. The strategy of the initial proposal was to “amend the NYC Zoning

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<sup>126</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope, Brooklyn*, 5.

<sup>127</sup> Lander.

<sup>128</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope, Brooklyn*, 4.

Resolution to create “R8-I”, a general residence district providing an incentive to developers to create affordable housing, and to map this zoning district on Fourth Avenue in Brooklyn, as part of the NYC Department of City Planning’s proposal for rezoning Park Slope.”<sup>129</sup> FAC’s November 2002 Policy Brief explains that “R-8I meets the two critical tests for an affordable housing bonus: (1) the base as-of-right zoning would be substantially more profitable than what currently exists; and (2) the market incentives to create affordable units are strong enough that a market driven developer would choose to utilize the density bonus available through inclusionary zoning.”<sup>130</sup> FAC’s R8-I zone would allow the same density as the Department of City Planning’s proposed R8A upzoning if a developer agreed that at least 20% of the new units would be affordable. The base FAR for the R8-I zone would be 5.0, equal to an R7A FAR, and more than double the current R6 maximum of a 2.43 FAR. If the developer sets aside 20% of her units as affordable, she would get a 20% density bonus up to a 6.02 FAR, or the R8A that DCP is currently proposing.

**Table 6: Current R6 and Proposed R8-I FAR and Building Height<sup>131</sup>**

<b>Zone</b>	<b>Maximum FAR</b>	<b>Est. “Normal” Maximum Building Height</b>
R6 (current zoning)	2.43	5-6 stories
R8-I base (no afford. hsg.) Equivalent of R7A	5.0	8-9 stories
R8-I bonus (20% affordable) Equivalent of R8A	6.02	12 stories

FAC maintains that under the R8-I zone, “in the best-case scenario, the full 450 units would be created [due to the upzoning of Fourth Avenue], with 90 affordable units for low- to moderate-income families. If only half of developers choose to utilize the inclusionary zoning, there would still be 405 total units, with 45 of them affordable.”<sup>132</sup>

Unlike the Inclusionary Housing Program in Manhattan, FAC says the R8-I zone would allow developers to use existing tax credits and tax-exempt bond financing, creating a financially viable incentive to attract development. All affordable units developed would necessarily be on-site, without the option of contributing to a housing trust fund due to the scarcity of developable land. The “specific FAR, height, parking, opens space and setback requirements...for the base and bonus zoning”<sup>133</sup> would have to be determined.

According to FAC, the Department of City Planning has voiced concern over the scarcity of affordable housing resources, and the potential for developers in the R8-I zone to monopolize resources, taking them away from other areas of the city. FAC counters,

<sup>129</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope, Brooklyn*, 1.

<sup>130</sup> Fifth Avenue Committee, *Testimony to the Brooklyn Borough Board and Borough President Regarding the Park Slope Rezoning*, 16 January 2002: p. 6.

<sup>131</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope, Brooklyn*, 6.

<sup>132</sup> *Ibid*, 9.

<sup>133</sup> *Ibid*, 10.

“The financial incentives projected for use here [4% tax credits and tax-exempt bond financing] are not extremely scarce or competitive. They are available for most projects where developers seek to utilize them (unlike other City and State programs which are more competitive). In addition, there are a relatively small number of potential development sites in the area, so it is difficult to imagine these developments monopolizing resources. Finally, once R8-I is created, other communities would be welcome to adopt it if they wish to create more incentives for affordable housing.”<sup>134</sup>

As the ULURP process moved forward, FAC modified its proposal to make it more politically palatable and to accommodate the broader Park Slope Rezoning. The new proposal recommends amending the current Department of City Planning Fourth Avenue proposal to upzone to R7A instead of R8A, leaving an opportunity for the Brooklyn Borough President or City Council to introduce a new zoning amendment, creating an “affordable housing bonus” district along Fourth Avenue.<sup>135</sup> As Brad Lander states in a February 2003 interview, “We’re not ready for the details of crafting an ordinance yet. Once we get R7A, we can sit down with all the players and come up with a model. This allows City Council to move forward with broader legislation regarding the contextual rezoning for Park Slope.”<sup>136</sup> FAC says that if the Department of City Planning R8A upzoning is approved, then there will be no margin for a future inclusionary bonus program, as anything higher than 12 stories would not be acceptable to the community. FAC argues that R7A is a 33% FAR increase, and therefore a 33% property value increase, over what exists now (R7A allows 8 or 9 stories as-of-right). In response to DCP’s anxiety that developers will not build in Park Slope if the as-of-right is only R7A, FAC points out that there are already three larger scale residential and mixed-use developments in construction along Fourth Avenue even with only an R6 zone (maximum 2.43 FAR).

FAC says the affordable housing bonus proposed by the Brooklyn Borough President or City Council could (1) apply only to Fourth Avenue by introducing a new zoning amendment without a new zone or using a special district through Section 23-146 of the Zoning Resolution; or (2) be mappable citywide. Either way, the bonus would grant developers one additional square foot of market-rate housing for each square foot of affordable housing. Again, developers would most likely combine the bonus with tax-exempt bond financing and the 4% Low Income Housing Tax Credit. FAC points out that “the Department [of City Planning] calls it “double-dipping” to utilize both a zoning bonus and financial incentives. Yet when the City combines its tax levy funds with federal HOME dollars, plus a 421a tax exemption and housing tax credits, we call it leveraging and we are rightly proud of it. Combining financial and zoning incentives is exactly what we should do in order to leverage scarce resources to create affordable housing.”<sup>137</sup> To the disappointment of the Fifth Avenue Committee, the deal struck

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<sup>134</sup> Ibid.

<sup>135</sup> Fifth Avenue Committee, *Testimony to the Brooklyn Borough Board and Borough President Regarding the Park Slope Rezoning*.

<sup>136</sup> Lander.

<sup>137</sup> Fifth Avenue Committee, *Testimony on the Park Slope Rezoning to the New York City Planning Commission*, 5 March 2003: p. 4.



between City Council and HPD at the Zoning and Franchise Subcommittee Public Hearing on the Park Slope Rezoning Proposal in April 2003 effectively stopped their inclusionary zoning proposals to incent the development of affordable housing on Fourth Avenue.

### ***Housing First!***

Housing First! is an umbrella advocacy organization with a membership of citywide and local organizations involved in the financing, production and management of affordable housing in New York City. Housing First!'s mission is to "elevate the issue of affordable housing for all New Yorkers to the top of the civic agenda, through forums and public events, reports, [and] media outreach."<sup>138</sup>

According to Housing First!, the "severe and growing shortage of affordable housing ...[has] already impacted New York in myriad ways, increasing homelessness, forcing middle class families to abandon the city, and complicating the ability of employers [corporations, non-profits, and public agencies] to attract qualified employees."<sup>139</sup>

Housing First! recognizes inclusionary zoning as "a state-of-the-art tool for encouraging affordable housing development in cities facing severe housing shortages."<sup>140</sup> It points out that over 100 communities around the United States have implemented inclusionary zoning ordinances. Of greatest interest to New York City are the programs that have been implemented in San Francisco and Boston because of their comparability with New York City in terms of high land values and construction costs. "Housing First! encourages the expansion and reinvigoration of the existing Inclusionary Housing Program to allow it to be applied to developments in medium-density districts in the outer boroughs, or to be linked to specific rezoning efforts."<sup>141</sup>

Housing First! emphasizes the ability of inclusionary zoning to facilitate Mayor Bloomberg's goal for New York City to develop 65,000 new housing units over the next five years, and its compatibility with the Department of City Planning's vision of "mixed-use, mixed-income waterfront communities."<sup>142</sup> According to Housing First!, the expansion and revision of the Inclusionary Housing Program will stimulate the production of both market-rate and affordable housing by: (1) providing affordable units in exchange for increased density, maximizing the buildable space in New York City; (2) presenting more opportunities for tax credit and tax-exempt financing; (3) offering "communities and developers...a mechanism to provide affordable and middle-income housing in gentrifying areas"; and (4) giving DCP and communities the chance to thoughtfully plan and address the potential impact of rezoning by encouraging the development of affordable units.<sup>143</sup>

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<sup>138</sup> Housing First! Web Page on-line, Available from <http://www.housingfirst.net/>, Accessed 3 March 2003.

<sup>139</sup> Housing First! *Building for the Future: New York's Affordable Housing Challenge*, 2.

<sup>140</sup> Housing First! *New Tools to Promote Development of Affordable Housing in New York City: Inclusionary Zoning*, Draft Policy Statement, March 2003.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

## **F. Developers**

The development community is perhaps one of the most important players in New York City's inclusionary zoning debate. Ultimately, the success of any voluntary inclusionary zoning policy will be decided by whether or not developers think it is profitable for them to put the policy into practice. Given New York City's extraordinarily high construction costs and land values, many developers argue that including affordable units in their new developments, with or without a density bonus, is just not financially feasible. Other developers support inclusionary zoning, but only if some specific program criteria are present, such as the option to build affordable units off-site.

### ***Michael Slattery***

Michael Slattery<sup>144</sup>, Vice President for Research at the Real Estate Board of New York (REBNY), believes that gentrification and displacement are occurring in New York City, but feels as though they are simply a function of housing demand and supply. Slattery supports inclusionary zoning, and thinks it's "a good housing resource for a deserving population."<sup>145</sup> Slattery says that the premise to create economically diverse neighborhoods (meaning one neighborhood is low-income, another is upper-income) citywide is good, but that diversity is not feasible within a single neighborhood. Slattery asserts, "It is a burden to market-rate areas to have affordable units; it burdens their services with no benefit to them."<sup>146</sup> At odds with the previous statement, Slattery says he is opposed to concentrating market and low-income units, and that there should be quotas for low-income or market-rate units per neighborhood. He says the strong housing market in NYC is a good factor for the success of inclusionary zoning. However, he adds that the strong market also makes it difficult to find land with low value to place the affordable units on. Slattery states, "Clearly low-income units should go in low-income neighborhoods next to city services such as power plants, transit services, and utility plants like ConEdison because there are lower land costs in these areas."<sup>147</sup>

Slattery does not think affordable units need to be built in the same development or neighborhood where the market-rate housing is built under an inclusionary program. Further, he says that market and inclusionary units cannot coexist in the same development in a financially feasible way, and that no market site can generate enough income to support inclusionary units on-site. Referring to New York City's current Inclusionary Housing Program, Slattery says the geographic area where developers can build the off-site affordable units has been too limited. "The problem with the current geographic boundary is that developers typically can't find a site within the boundary because land costs are too prohibitive. The entire city is the beneficiary [of the affordable units being built], and therefore the boundaries should extend beyond the Community

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<sup>144</sup> Michael Slattery and Jay Seiden, two figures who have been involved with the New York City development community for many years, were interviewed for the purpose of writing this thesis. However, they certainly cannot represent the views of the entire development community. Efforts should be made to include developers in New York City's discourse on inclusionary zoning.

<sup>145</sup> Michael Slattery, Vice President for Research at the Real Estate Board of New York, interview by Gretchen Maneval, 28 February 2003, Brooklyn, NY.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

Boards.” However, politically, he thinks it would also be difficult to build the affordable units off-site as some low-income neighborhoods wouldn’t want more low-income housing in addition to what they already have.

Generally, he does think the voluntary IHP program has been successful, and he would like to see it expanded into other New York City boroughs and zones if it is economically viable. Slattery emphasizes that the current inclusionary zoning in Manhattan works because of the 80/20 program. Furthermore, he says “This works [the 80/20 program] because these market areas [in Manhattan] are so strong that the market-rate units can support the production of the low-income units, and over time the low-income units become market-rate so the developer makes a profit.”<sup>148</sup>

Slattery does point out that the Inclusionary Housing Program in R10 has not produced many units, and that people should realize that it is a neighborhood integration program and not a production program. He adds that inclusionary zoning is just another government imposed cost, like sprinkler and handicap accessibility requirements, that increases developer’s costs, which in turn leads to an increase in the price of market-rate units. Slattery says the City should look beyond programs like inclusionary zoning, and begin “tackling government requirements that increase cost and impede production” to alleviate the housing crisis.

Slattery does think that inclusionary zoning provides a good opportunity to build more housing, and that because the burden is on the private sector, the units will be built in an efficient and timely manner.

### *Jay Seiden*

Jay Seiden, an attorney who works with developers in New York City to help maneuver them through the process of acquiring inclusionary air rights, is an advocate of inclusionary zoning. He is a member of the Housing Committee of The Real Estate Board of New York, as well as a member of the Executive Board of the New York State Association for Affordable Housing (NYSFAH). Seiden believes there should be a coalition between developers and inclusionary zoning advocates, as he says both for-profit and affordable housing developers need to have a relationship of reciprocity for the current Inclusionary Housing Program to function. Seiden says that generally what happens is that an affordable housing developer will sell her air rights to a for-profit developer, using the proceeds to develop the affordable units off-site. Seiden claims that the only time a for-profit developer would develop affordable units independently is if she is developing those units on-site. He also points out that one difficulty of the current program is that it is sometimes hard for for-profits and affordable developers to find each other.

Seiden cites several problems with developers including the affordable units on-site. First, he says placing affordable units on-site makes it challenging to sell the market units, and difficult to structure a condominium plan due to the required dispersing of affordable units within the development. Seiden also indicates that it is too expensive to

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<sup>148</sup> Ibid.

develop the affordable units on-site. He believes the resale restrictions on affordable for-sale units will affect the resale of the rest of the property. Seiden does support the affordable units staying so in perpetuity. Finally, in terms of height limits, Seiden suggests, “Why not go to R10? Height is not a bad idea!”<sup>149</sup>

The opinions on gentrification and inclusionary zoning presented above provide a snapshot of the current debate in New York City. Given the time constraints of this thesis, there were limits to the number of interviews that could be conducted, the policy briefs and position papers that could be reviewed, as well as the range of perspectives that could be incorporated. Future research regarding inclusionary zoning in New York City should canvas a much broader range of stakeholders, as well as allow for more in-depth research into each stakeholder’s position. Chapter 5 provides a synthesis of stakeholder positions, policy recommendations, and strategies to maneuver through New York City’s political landscape.

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<sup>149</sup> Jay Seiden, Partner, Seiden & Schein, P.C. Attorneys at Law, interview by Gretchen Maneval, 27 February 2003, Brooklyn, NY.

## **Chapter 5: Inclusionary Zoning Policy Options and Strategies in the New York City Housing Environment**

As stated in the Thesis Introduction, the goal of this thesis is to lay the foundation for a more informed discourse on including inclusionary zoning as a mechanism for creating affordable housing in New York City. An unexpected result of writing this thesis was the discovery of the great influence of politics and ideology on the New York City inclusionary zoning debate. While the infusion of dollars and the resulting revitalization in New York City's gentrifying neighborhoods is a welcome change to the white flight of previous decades, it is imperative that the City and its constituents are aware of the housing product that is being produced by this investment, and for whom it is being built. Inclusionary zoning, when combined with other incentives, is a viable option for New York City government to stimulate the production of both market-rate and affordable housing for its residents. A summary of New York City's housing environment and the legal, economic, social and political arguments are presented below. Recommendations for the elements of a New York City inclusionary zoning policy are outlined. Next steps for future research and policymaking are also discussed, including a strategy to address the political and ideological barriers in New York City's inclusionary zoning debate.

### **I. Ideal Housing Environment in New York City for Inclusionary Zoning**

New York City boasts, for better or for worse, an ideal environment conducive to the application of inclusionary zoning for the production of affordable housing. A strong housing market, severe housing crisis, growing gentrification and displacement, and the Department of City Planning's rezoning proposals, set the stage for the successful application of an inclusionary zoning program.

New York City's aggressive housing market has seen a continued demand for housing at ever increasing prices and rents over the last twenty years, particularly in specific neighborhoods. However, high construction and land costs have kept the supply of housing from meeting demand. An allowance for increased density for market-rate housing production, combined with an inclusionary zoning program providing for a set-aside of affordable units, would ensure a mix of housing for families of all income levels. An inclusionary zoning program would work especially well in some neighborhoods in the outer boroughs where the housing market is just as hot as in Manhattan, and land costs are even lower, addressing one of the difficulties developers point to with New York City's current Inclusionary Housing Program.

New York City continues to be plagued with a housing crisis. Most affected by this crisis are moderate- and low-income families, almost all of whom are paying at least 30% of their income for rent, and many of whom are paying upwards of 50% and 60%. Rents and housing prices continue to rise exponentially, while incomes remain paralyzed by the ailing economy and staggering deficits. A growing population year after year that far exceeds the rate of housing production, an increasing number of overcrowded units, and some of the lowest vacancy rates in the country, make availability of housing in New York City a major

issue. These housing crisis statistics demonstrate that the reliance of the Department of City Planning on the market to provide enough housing to induce a filtering effect for lower-income residents is not working. An infusion of market-rate units spurred by DCP's proposed upzoning/rezoning changes will also not impact supply to such a degree that prices will come down; the housing market in New York City is just too tight.

Gentrification and displacement at the neighborhood level in New York City necessitate the involvement of government to mitigate their effects on long-time, working class, residents, especially when government policies such as rezoning exacerbate these trends. The deconcentration of poverty in New York City neighborhoods that gentrification brings about should be taken advantage of by holding it steady, instead of letting it tip a neighborhood concentrated with poverty into one concentrated with wealth. As upper-income residents move into historically middle and working class neighborhoods, they are providing a market for landlords and owners to ask for and receive increased rents and housing prices. Moderate- and lower-income families cannot compete with the wallets of the rich, and so will either end up paying an unbearable percentage of their income for rent, or be forced to leave the neighborhood. Furthermore, the rents and prices in gentrifying neighborhoods are becoming so prohibitively high that middle class families hoping to move to these neighborhoods are completely priced out. The 56% increase in incomes in Park Slope in the last ten years, and 52% increase in median monthly rent demonstrate the influx of upper-income persons, and how rents respond to this new market.

New York City is known for the diversity of its people, a microcosm of the melting pot that the United States aspires to be. The diversity of incomes, race, age, culture, and religion in New York City, each of its five boroughs, and its hundreds of neighborhoods, is what makes this City functional and desirable for its residents, and remain marketable as a tourist destination. If gentrification forces low-income persons, and persons of color and different cultures from New York City's borders, it will become a homogenous, ethnocentric City, struggling to understand and accept those of other incomes, ethnic background, and religions. Gentrification will ultimately lead to exclusion and resegregation in a City that has battled for years to diffuse racial tensions and promote an equality of opportunity. All New Yorkers deserve the equal opportunity to live in safe, decent, and affordable housing. The rezoning and upzoning proposals exacerbating displacement neglect the right of New Yorkers to remain in neighborhoods in which they grew up, went to school, and raised families. Are we to tell New Yorkers who held together their neighborhoods and families through difficult times, many of whom worked to revitalize their neighborhoods, that government policy is, in effect, forcing them to leave just as things are turning around?

The various proposals for rezoning put forth by the New York City Department of City Planning, with the apparent acceptance of an increase in density, allow for the opportunity to implement a density bonus system in exchange for a certain percentage of affordable units in new development. Whether upzoning, or changing the zoning from manufacturing to residential use, the proposals are effectively increasing the value of land for property owners and developers. It is appropriate that this publicly endowed windfall also provides a public good by the City incenting or mandating the provision of housing which is affordable to moderate- and low-income families. The density and use change incentives

for producing market-rate units imbedded in the rezoning proposals are imperative to mitigating New York City's housing crisis. However, with this comes the obligation of the Department of City Planning to plan for the working class, tax-paying members of the community who will be adversely impacted by this change.

## **II. Legal, Economic, Social, and Political Arguments to Consider**

Advocating for or opposing inclusionary zoning requires an exploration of the legal, economic, social and political arguments for and against this policy. The books, articles, and policy briefs studied for this thesis and the interviews conducted informed the synthesis of these arguments. This section highlights and emphasizes the most important of these. What became apparent during the research of this thesis was the extent to which an underlying ideology infused most of the stakeholder positions. Beliefs regarding the use and impact of zoning related to social outcomes, the value of population diversity, and land ownership rights, seem to overshadow the more quantifiable research and/or factually based arguments.

The constitutionality of an inclusionary zoning ordinance is primarily an issue with mandated programs. If New York City were to consider a citywide mandatory program, or a mappable inclusionary provision which specific Community Boards or neighborhoods could adopt, three constitutional concerns should be addressed: substantive due process, equal protection, and taking. New York City would need to research and present an evaluation of general housing need, and a relationship between this need and inclusionary zoning to satisfy that substantive due process measures were taken. An inclusionary program in New York City might be challenged if it is mandated in one area of the city or not another, or is required of only a certain group of developers, based on the equal protection provision of the constitution. The experience of municipalities around the country demonstrates that substantive due process and equal protection issues are usually easily satisfied if the locality thoughtfully addresses these issues in their program.

The main legal challenge to inclusionary zoning ordinances involves the claim that the program results in a taking of the owner's property or development rights, and the potential for monetary profit. Inclusionary zoning advocates in New York City should collect data and evidence to demonstrate that a nexus does exist between new development and the need for the inclusionary requirement (for example, the impact of primary and secondary displacement that may result from development). However, as long as some type of compensation (i.e. in the form of a density bonus) is allotted to developers, the taking issue will most likely become a moot point. Nexus challenges will become more likely if the affordable units are located off-site, or if contributions are made to some sort of Housing Trust Fund, because these requirements are more indirectly related to the construction of market-rate units. New York City government should also confirm that it has expressed or implied statutory authority to adopt the inclusionary ordinance.

The economic rationale influencing inclusionary zoning advocates and opponents, and their predictions regarding the economic impact of an inclusionary program, is based partially on quantitative evidence, but also on anecdotes and ideology. A few important concepts emerge from examining the literature, case studies, and perspectives of New York City's stakeholders. What becomes most evident is that within the context of proposed rezoning changes, inclusionary zoning will allow New York City to take advantage of the wave of capital pouring into gentrifying communities without flooding the market with luxury units that are out of the financial reach of low- and moderate-income residents. In the case of



rezoning, the windfall that developers would receive serves as the perfect bonus situation. Any actual or perceived loss in developer profit will be more than compensated for with density bonuses, and the use of other City financial incentives.

Responding to developer claims that mixed-income buildings are not marketable, this is just not the case, especially in a city such as New York, where a mix of incomes is the norm. In regular market-rate development, developers purposefully program buildings with a mix of unit types to accommodate the difference in tenant or buyer space needs and income. To say that a mix of incomes within a building is not feasible in New York City, especially the mix of upper and moderate created by inclusionary zoning, is imprudent.

In terms of the economic impact of inclusionary zoning on consumers and landowners in New York City, an important question to consider is, if indeed the developer views inclusionary zoning as increasing her development costs, will she pass these perceived or actual costs on to the consumer and landowner, adversely impacting the housing market? The preemptive answer to this question is that there should be no increased development costs if density bonuses and financial incentives are incorporated into an inclusionary zoning program. If further investigation of development costs and budgets reveals that the inclusionary zoning program is not offsetting the loss in income from developing affordable units, the program should be reevaluated, and modifications made. One area for concern and consideration is resale restrictions. Although ideal for keeping units affordable in perpetuity, they do not allow for the owner of the affordable unit (i.e. a cooperative or condominium owner occupying the unit), or building owner renting affordable and market units, from benefiting from any increase in property value upon selling. The loss of this future profit should be taken into consideration when crafting an inclusionary zoning program in New York City.

The economic impact of a new inclusionary housing program on New York City, Brooklyn, or neighborhood housing markets would be positive. Increased density is a crucial catalyst for development. A thoughtfully crafted bonus program would not increase costs for developers, but make development even more profitable. The expanded application of a modified Inclusionary Housing Program would advance The New Marketplace affordable housing development goals of the Bloomberg Administration of creating 65,000 new affordable units over the next five years. It would also facilitate and support the Mayor's vision for waterfront economic and residential development. Communities such as Greenpoint/Williamsburg might be more willing to accept greater density with the promise of new affordable housing for neighborhood families.

The availability of affordable units in rezoned or upzoned communities will also make these areas much more attractive to business and commercial owners considering relocation there. New York City's economy, service infrastructure, health care industries, and educational facilities will continue to suffer if employees cannot find affordable housing in the communities they serve. As Housing First! points out, "The scarcity of affordable housing jeopardizes the city's continued economic success...since 1992, New York gained almost 450,000 new jobs while adding only 57,500 housing units...Growing companies are extremely reluctant to locate or expand in New York if their employees cannot find

affordable places to live. In a 1999 survey of the largest employers in the New York area, the Office of the New York State Comptroller reported that fully 86% of respondents cited housing costs as a serious deterrent to doing business in New York.”<sup>150</sup>

The current vision of economic development for New York’s waterfront areas and the city at large cannot be implemented if: the companies being courted by the City can’t find a pool of adequate labor within a reasonable distance for commuting; schools serving the influx of residents can’t find teachers; and healthcare facilities and emergency protection agencies have to hire residents living prohibitively far distances from their places of operation. Inclusionary zoning will benefit many sectors of New York City’s economy if the program thoughtfully considers economic implications and the diversity of markets within the city.

From a social perspective, it is important to emphasize that all New York City residents deserve the equality of opportunity for decent, safe, and affordable housing. Based on this fundamental value, it is the City government’s job to provide this opportunity. Another value important to most New York City residents is diversity. If the City does not proactively mitigate the adverse effects of gentrification and displacement, especially when intensified by proposed rezoning and upzoning, homogeneity and concentrations of poverty and wealth will dominate the residential landscape of New York City. Some warn that the impact of an inclusionary zoning program might be marginal, depending on its scale. Inclusionary zoning will not stop the negative consequences of gentrification and displacement, but it can serve as a vital tool along with rent regulations and tax incentives to maintain the City’s stock of affordable housing.

As income often sadly aligns with race, ethnicity, and culture, the arguments made by some representatives of the development community that diversity within a given neighborhood is not practical, and that providing affordable units in upper-income neighborhoods is a burden to the upper class, border on being segregationist. Statements suggesting that lower- and moderate-income persons should live next to city services such as power and utility plants, and transit services, because of low land costs found in these areas makes one question the motives of the speaker. This rationale was used for the site-selection process of public housing units in the 1940’s, 50’s, and 60’s. One would hope that such flawed logic would not steer the policies of New York City’s planning agencies.

It is also important for New York City inclusionary zoning advocates to think through the social implications of allowing the on-site versus off-site development of affordable units under an inclusionary zoning program. Allowing off-site development will provide the same number of affordable units, but it may perpetuate the concentration of poverty in certain neighborhoods, and will not support the value of diversity discussed above.

The argument of the Department of City Planning that it does not want to use zoning for social engineering, and is therefore opposed to future inclusionary zoning programs, is illogical. Zoning is not just a tool that shapes a physical environment. Any zoning resolution inherently leads to social and economic impacts, including the rezoning

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<sup>150</sup> Housing First! *Building for the Future: New York’s Affordable Housing Challenge*, 10-11.

proposals put forth by the Department. When DCP zones for aesthetics (for example, contextualizing the brownstone area of Park Slope), it is implying more than the idea that the preservation of that aesthetic value of the buildings is worthy of legislation. It is also implying that the predominantly wealthy population of that area has the right to stay in their homes, unaltered by and protected from market forces. Contrast this with the upzoning of Fourth Avenue, where the housing stock is not quite as aesthetically pleasing, yet is still very preservable. The major difference is that the occupants of the buildings along Fourth Avenue have lower-incomes and are primarily working class, relative to the population of the Upper Slope (brownstone neighborhood). So the wealthy neighborhood gets a contextual zoning, and the lower-income neighborhood gets upzoned? Does DCP care more about preserving buildings than homes? Do they truly not realize the social implications of the zoning policies they are implementing?

Advantageous to City Government and politically attractive, inclusionary zoning presents a low-cost alternative for providing affordable housing by leveraging private resources, as well as the City's other financing incentive tools. This type of public/private partnership program is crucial amidst New York City's budget crisis. As previously mentioned, inclusionary zoning supports the Bloomberg Administration's vision of the waterfront, its New Marketplace objectives, and the Department of City Planning's increased density and use changes of its rezoning proposals. Much of the city is not built to its fullest capacity for density; inclusionary zoning could facilitate politically palatable density increases.

Spearheaded by local affordable housing development organizations, and supported by the Brooklyn Borough President, City Council Members, several Commissioners of New York City's City Planning Commission, and many developers, the adoption of an inclusionary zoning provision seems politically feasible. However, the Department of City Planning's laissez-faire approach is not compatible with the advancement of an inclusionary zoning program. The laissez-faire approach is simply unacceptable, as historically, other supposedly "free-market" zoning policies have created the need for inclusionary zoning in the first place. Furthermore, the Department of City Planning, as a part of the elected Bloomberg Administration, has the obligation to ensure decent, safe, and affordable housing to citizens of New York City. The Department of City Planning's concern about targeting already thriving areas versus distressed areas with resources does merit consideration. However, as stated in the Fifth Avenue Committee's November 2002 policy brief, "The financial incentives projected for use here (4% tax credits and tax-exempt bond financing) are not extremely scarce or competitive. They are available for most projects where developers seek to utilize them (unlike other City and State programs which are more competitive)."<sup>151</sup> Therefore, targeting resources in one neighborhood would not result in depleting resources for other areas.

Politics makes strange bedfellows. Many New York City developers and affordable housing advocates both want to expand a modified version of the R10 Inclusionary Housing Program. The question is, why? Obviously, developers think the program profitable. If combined with tax abatements and other City financial incentives, developers

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<sup>151</sup> Fifth Avenue Committee, *Encouraging Affordable Housing Through Inclusionary Zoning in Park Slope*, Brooklyn, 10.

will make money off of this venture. Support from the for-profit development community is great for affordable housing advocates who want more affordable housing, right? Not necessarily. As with any policy, the motivation of supporters and specific aspects of the policy should be considered. Most developers support an inclusionary program only with the allowance for off-site affordable units, the implications of which were discussed above. Developers are not only advocating for off-site affordable units, they want the right to develop them outside of the Community Board, far from where their market-rate development is being built (presumably because they can find lower land costs in other areas, enabling them to make more of a profit). New York City elected officials, planning entities, and the communities involved in crafting an inclusionary zoning program will have to decide if they are willing to accept this perpetuation of segregated neighborhoods in order to get new affordable units built.

Some affordable housing advocates and developers might also share the political position of not supporting an inclusionary zoning program. Affordable housing advocates might think a voluntary program is too soft. They might also be opposed to a program targeting moderate-income families as opposed to low- and very low-income families. Meanwhile, developers might be opposed to the same inclusionary program as they believe participating will result in an increase in costs, and therefore a decrease in profits.

After examining the legal, economic, social and political arguments surrounding the use of inclusionary zoning in New York City, it becomes clear that such a program, if rendered with the input of all stakeholders, would be successful in providing both affordable and market-rate housing. It also becomes clear that politic pressure and ideology are motivating the government agencies and some of the elected officials involved in this debate. Strategies for navigating through this political and ideological web are discussed in section *IV. Future Research and Policymaking* of Chapter 5.

### **III. Recommendations for Elements of a New York City Inclusionary Zoning Program**

Changing the specific elements of an inclusionary zoning program will influence the legal, economic, social, and political arguments examined above. More importantly, the structuring of the elements will directly impact the success of the program in producing affordable units. The following points outline the general elements that comprise inclusionary zoning programs, and include recommendations for these elements relative to New York City.

#### **A. Mandatory or Voluntary?**

Generally speaking, inclusionary zoning can either be voluntary or mandatory, judicially mandated, or legislated as a part of the zoning code. A citywide mandatory program in New York City would be equitable, and ensure that affordable housing units are produced. It is very doubtful given the high demand for residential development in New York City that developers would shun New York City as a whole just because of an inclusionary housing program, especially if the City crafted the program so that it would be more profitable than regular development. Another option for New York City is to propose an amendment to the Zoning Resolution allowing for mappable inclusionary zoning. Community Boards and neighborhoods could decide for themselves, given the state of the housing market in their district and the capacity for development, whether they think the program would work. However, one drawback to not mandating a blanket program for the entire city is that developers might avoid developing in the areas that adopt a mandatory inclusionary provision. It should be noted that most voluntary inclusionary zoning programs across the country have not produced much low- and moderate-income housing. If New York City wants to create a voluntary program, it is paramount that it is combined with the City's other financial and tax incentive programs so that developers motivated by profit will choose to participate.

#### **B. Population Targeted**

New York City inclusionary zoning policy analysts should consider the implications of targeting moderate-income versus lower-income families. There is a dearth of housing development for middle-income families. Most government housing programs like public housing and Section 8, as well as subsidy programs for local affordable housing developers, target the very poor. However, it is possible that offering incentives for developing units targeting populations at 80%, 120% and even 150% of area median income ends up giving developers bonuses and resources to develop units that are really almost market-rate anyway. Furthermore, the extraordinarily long waiting lists for public and Section 8 housing do point to a dire need for very low- and low-income housing. The decision of whether to target moderate- versus low-income families will most likely be based on financial feasibility. The population targeted can also determine the degree to which an inclusionary zoning program mitigates displacement. For instance, if there is not local preference for affordable units developed under an inclusionary program, it is likely that people immigrating to the community (perhaps young middle class, white professionals) will occupy the new units, and not those long-time residents in jeopardy of being displaced.

### **C. Incentives to Balance Costs**

A New York City inclusionary zoning program should provide an adequate density bonus to offset the loss in future income from developing affordable units. New York City government should also allow for the use of tax-exempt bond financing, tax credits, and tax abatements under an inclusionary program. Waiving development fees, expediting the permitting process, allowing flexibility in site planning, and donating city owned land or buildings are other incentives New York City could provide to developers who take advantage of an inclusionary zoning program. Given the lessons of New York City plaza incentive zoning in the 1970's, program drafters should spend time modeling program incentive features to ensure a balance between profitability for developers, and giving away too much in terms of City resources and density.

### **D. Number or Percentage of Affordable Units Required**

The number or percentage of affordable units required of New York City developers will greatly impact the financial feasibility of an inclusionary zoning provision. Architectural and financial modeling by the City, potential developers, and affordable housing advocacy organizations should focus on the relationship between a program's density bonus and the required affordable units (i.e. a sliding scale, one to one ratio, etc.)

### **E. Tenure**

Whether the affordable units that can be developed under an inclusionary program are homeownership, rental, or both, needs to be determined. It is generally thought that homeownership strengthens the stability and health of a neighborhood. However, New York City is a city of renters, and not all residents have the financial capacity or desire to become homeowners. Further, resale restrictions on cooperative or condominium units might dissuade potential homeowners from buying units designated as affordable in perpetuity.

### **F. Purchase Price or Rent**

This aspect ties very closely to population targeted, as most likely price or rent will be determined based on the income of tenants. In New York City, where many moderate- and lower-income residents pay upwards of 50% of their income on housing, setting price or rent at a level no more than 30% of income would be prudent.

### **G. Location of Affordable Units**

If a New York City inclusionary zoning program mandates the development of affordable units on-site, the social goals of diversity and equity discussed in this thesis will be addressed. However, within a building, a developer should be able to maximize the rent or price of market units by locating them on higher floors and building corners, and not be required to disperse affordable units throughout the building. Dispersing affordable units so that tenants are not isolated or chastised is good in theory, but in practice, residents of market units have not generally negatively reacted to lower-income tenants. Given the high land costs in New York City, most developers would like to build affordable units off-site, far from the pricey neighborhoods where their market-rate

developments are located. As previously discussed, this will result in resegregation and does not promote the value of equality of housing opportunity for all New Yorkers.

#### **H. Term of Affordability**

All affordable units produced under a New York City inclusionary zoning program should be affordable in perpetuity. Some inclusionary zoning advocates claim developers will demand an exit strategy, and will not participate in a voluntary program without one. Yet making a unit affordable for a predetermined number of years allows the developer to receive two bonuses: a density bonus during development, and the profit of selling or renting the units at market-rate the end of the affordability term. New York City needs affordable housing too badly to allow these units to escape back into the market. However, resale restrictions and rate of return restrictions are double edged swords, as although they allow units to remain affordable in perpetuity, they take away a moderate- or low-income owner's ability to cash-in on her asset's market value.

#### **I. Provision for In-lieu Fees**

The 1983 Pratt Institute inclusionary zoning proposal included the establishment of a Housing Trust Fund. Unfortunately, in 2003, scarcity of land is a major blockade to developers of affordable housing. If land is available, affordable housing developers are often outbid by for-profit developers. Allowing developers to contribute to an in-lieu fund instead of actually developing units puts the burden on the City and local affordable housing developers to find land to acquire, and to spend time and resources developing the housing. Furthermore, a Housing Trust Fund would also not support the goal of diversity, as units would almost certainly not be located in upper-income neighborhoods.

#### **J. Comparability in Quality of Market and Affordable Units**

A New York City inclusionary program should allow developers to incorporate lower cost products, fewer amenities, and smaller sizes for affordable units, as long as a predetermined standard of quality applies to all units. This would decrease the development costs of the affordable units, and allow for either more affordable units to be built, or those that are built to have deeper affordability.

#### **K. Program Management**

The implementation plan, process for program monitoring, and ongoing management and maintenance plans of any inclusionary zoning program should be carefully considered by New York City policymakers. If policymakers decide to use the current R10 Inclusionary Housing Program as a model, it is imperative that entities other than non-profits are permitted to manage the units, and that developers have the ability to use income from the affordable units to cover debt service.

## **IV. Future Research and Policymaking**

Future research regarding the use of inclusionary zoning in New York City will better inform advocates, as well as the broader discourse. However, simply educating the stakeholders about precedent success, and the legal, social, and economic arguments for and against inclusionary zoning, will most likely prove fruitless given the current political climate in New York City. The political and government infrastructure is ideologically opposed to the concept of inclusionary zoning. Therefore, research must be accompanied by the development of a strategy to balance the political power of those in New York City opposed to inclusionary zoning.

### **A. Research**

Setting aside the political obstacles, it is useful to point out the gaps in data and knowledge that ideally would be filled before a new inclusionary program is crafted for New York City. It is not anticipated nor expected that all of the below recommendations for research will be pursued, but it is important to, at the very least, recognize them.

1. Research of the successes and failures of inclusionary programs from around the country should be conducted. There are several initiatives to collect this information currently underway around the country; New York City stakeholders should tap into these resources. When looking at precedents, it might be useful to collect data regarding some of the macroeconomic concerns raised about inclusionary zoning programs, including the concern that market-rate housing prices will rise if mandatory inclusionary zoning is implemented.
2. To better understand the claims of developers that an inclusionary zoning program might increase costs, a study analyzing development costs in New York City could be conducted by an impartial research entity. This could include, but not be limited to the following costs: land, site improvement and preparation, construction, interest and financing costs, fees, permits, and processing. Further, this study could look at average sales and rental income to ascertain a norm of developers' profit margins in New York City. The goal of this study would be to appropriately match the incentives being used to offset developers' costs and forgone future income caused by developing affordable housing under an inclusionary program. One would have to take into account the previously discussed amorphous and subjective nature of the "numbers" when conducting this study, and analyzing its results.
3. Financial and architectural modeling using specific case study development sites could be conducted, again by an impartial entity, to understand the feasibility of applying different versions of an inclusionary zoning program.
4. It was mentioned by a staff member of the Citizen's Housing and Planning Council that some developers in New York City are not building to the allowable envelope. If this is the case, it could impact the success of an inclusionary zoning program. Further research regarding this claim is advisable.



5. There is a dearth of available data regarding gentrification and displacement in New York City. Indicators for gentrification and displacement need to be collected to better inform all planning policy, not just inclusionary zoning. In addition to analyzing neighborhood, Community District, borough, and citywide indicators, specific case studies on direct displacement should be conducted. For example, one could look at new developments to determine whether sites with occupied buildings were assembled for demolition, and if so, if residents were proactively relocated, or left to fend for themselves. These data results could be used as a part of the political strategy to point to a nexus between new development and the need for affordable housing.

### **B. Policymaking**

Formal and informal coalitions of New York City affordable housing developers and advocates, and supportive elected officials and residents, are initiating a grassroots campaign to bring the concept of inclusionary zoning back into the City's policy agenda. This grassroots initiative is in response to the ideological opposition to inclusionary zoning of New York City's political power structure. As the policy debate continues, a few fundamental questions should be asked:

First, how broad of an initiative is this? Should advocates be targeting only neighborhoods with proposed rezoning or upzoning? Should they be looking proactively at neighborhoods like Bedford Stuyvesant and Crown Heights in Brooklyn, and Washington Heights and Inwood in Manhattan, possibly the next in line for gentrification, regardless of existing DCP rezoning proposals? Should a citywide coalition of all five boroughs advocating inclusionary zoning be formed? Given the unfortunate track record of voluntary programs, is it prudent to fight for these? Would it be more useful to push at the State level for a mandatory program?

Another question for stakeholders in New York City's debate to ponder is what built form are they willing to accept? In other words, what maximum density are they willing to live with in order to have affordable housing built?<sup>152</sup>

The answers to these questions, as well as the other topics discussed in Chapter 5, should lay the foundation for future policymaking in New York City. Beyond the above recommendations for research, the following steps could be taken as a part of the political strategy to bring inclusionary zoning to the policy table:

1. Inclusionary zoning advocates should continue to align their efforts with the timeline of Department of City Planning rezoning and upzoning proposals, while defining the broader scope New York City's inclusionary zoning initiative.

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<sup>152</sup> Eva Hanhardt, Director, The Planning Center, Municipal Art Society, interview by Gretchen Maneval, August 2003, New York, New York.

2. Grassroots initiatives such as the Brooklyn Coalition for Equitable Development (BCED)<sup>153</sup> should be encouraged, serving to balance the political power of those opposed to inclusionary zoning. BCED is a newly formed grassroots organizing campaign whose goal is to update antiquated zoning policies in New York City that perpetuate a disparity of income, and a lack of housing affordability and quality. BCED has developed a political strategy to introduce new sections of zoning text into City law that serve as tools for equitable development. BCED's proposed zoning tools include planned manufacturing districts and inclusionary zoning, and other policies such as tax increment financing. Such coalitions and grassroots efforts should also enhance outreach and education for New York City residents regarding the concept of inclusionary zoning and policy options. This process could be facilitated by engaging the local media.
3. Advocates for inclusionary zoning should plan a forum for the debate, such as the 1983 Pratt Institute/Metropolitan Action conference. The conference could bring experts from around the country together to discuss programmatic precedents and future New York City policymaking. All of New York City's stakeholders, including those opposed to inclusionary zoning, should be invited to this event to ensure that a comprehensive debate precedes whatever consensus is reached, whether this is an agenda for future research, inclusionary policy goals, or specific programmatic elements.
4. Displacement data collected from specific new developments could add fuel to the argument that a nexus does exist between new development and the need for affordable housing. This evidence could lead to the involvement of the courts in mandating some type of inclusionary zoning in New York City.
5. Any political strategy of inclusionary zoning advocates should use data modeling and numbers judiciously, as getting bogged down in a war of numbers will not be productive. For example, inclusionary zoning advocates conducted financial and architectural modeling for a specific site along Fourth Avenue in Park Slope to demonstrate that inclusionary zoning, especially when combined with other financial incentives, would be profitable for developers of market-rate housing. Those opposed to inclusionary zoning simply said these numbers were incorrect, without providing evidence supporting their assertion. Months later, the Department of Housing Preservation and Development released spreadsheets containing data they said "proved" inclusionary zoning wouldn't work along Fourth Avenue. After reviewing the HPD spreadsheets, inclusionary zoning advocates said that HPD's numbers *did* show that inclusionary zoning would work. One can see how a difference in ideology can impact the interpretation of numbers, and why getting mired in the subjectivity of data modeling might not benefit either side of the debate. Data modeling is important, but might be seen as more legitimate, if a nonpartisan third party entity conducted the research.

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<sup>153</sup> BCED is comprised of a coalition of Brooklyn affordable housing developers and community development corporation representatives.

6. The Park Slope Rezoning should be used as a model for “lessons learned” for future inclusionary zoning political strategies. Despite financial and architectural modeling, the presentation of precedent successes, and the documentation of both a housing crisis and the impact of rezoning and upzoning on gentrification and displacement, the decision of whether to include inclusionary zoning along Fourth Avenue in Park Slope came down to politics. The fact that a deal was struck without an inclusionary zoning related amendment at the New York City Council Zoning and Franchise Subcommittee public hearing **before** the public testimony began undermines this country’s democratic processes. How can inclusionary zoning advocates, and independent citizens, rely on New York City public approval processes if they cannot even trust that they will be given a voice at public hearings? The pressure of a continually shrinking City budget, and competing programmatic funding demands, leaves locally elected officials at the mercy of the ideologies of the Bloomberg Administration and related City agencies. The undeniable presence of politics in this debate underscores the need for grassroots coalition building as discussed above in point 2.
7. Affordable housing and inclusionary zoning advocates should be wary of last minute offers of money from government agencies to develop affordable housing. First of all, given the budget crunch, it is likely that the \$6 million offered at the Zoning and Franchise Subcommittee will be one of the first line items in the budget that is cut. If it is allocated, the \$6 million means very little without land available along Fourth Avenue (where a 3100sf lot just went on the market for \$2.1 million) to develop the housing on. Even if there were land, \$6 million would only allow for the construction of about 60 affordable units (far less than estimated with inclusionary zoning). Furthermore, HPD’s goal of producing 130 affordable units with proposed \$6 million allocates only about \$45,000 for each unit. Estimated construction costs of \$100,000 per unit leaves a huge funding gap; where will this gap financing come from?

Any political strategy should take into account the different typologies of stakeholders and their needs. Quantitative and qualitative research regarding inclusionary zoning, when combined with a political strategy, will address the varied arguments of developers, housing organizations, elected officials and government entities.

If the providers of affordable housing in New York City want to turn this policy discussion into law, a comprehensive and collaborative effort involving all the city’s housing experts needs to take place. Crafting a proposal acceptable to Mayor Bloomberg and his administration will require the close examination of all arguments and program options presented in this thesis. Any initiative should proactively address the anticipated arguments against inclusionary zoning, some of which can be dismissed as political and subjective in nature. Other opposition arguments need to be fleshed out, mitigating any detrimental aspects of an inclusionary zoning program.

It is a critical moment in the history of New York City: either the adoption of a new inclusionary zoning policy that provides for the voluntary or mandated construction of

affordable housing in new development is explored, or New York City will be faced with the exodus or homelessness of thousands of low- and moderate-income residents who can no longer afford to live in their own city. It is imperative to New York City's economy that it does not lose the working class, the people who literally allow the city to function on a daily basis: teachers, police officers, transit employees, and trades workers. While New York City values and encourages real estate investment in its communities, it must demand a balanced and equal revitalization that benefits all residents.

## Appendix

### Examples of Inclusionary Housing Program Characteristics<sup>154</sup>

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<sup>154</sup>Business and Professional People for the Public Interest, Database on-line, Available from [http://www.bpichicago.org/hcr/rihi/pubs/ih\\_matrix.pdf](http://www.bpichicago.org/hcr/rihi/pubs/ih_matrix.pdf), Accessed 11 May 2003.



### Examples of Inclusionary Housing Program Characteristics

	Year of Inception	Affordable Units Produced	Threshold Number of Units	Set-aside Requirement	Control Period	"In lieu of" payment/ Off-site Development	Density Bonus	Other Developer Incentives
<b>Boston, Massachusetts</b>	2000	68	Development exceeding 10 units	10% of on-site units	"Maximum allowable by law"	May build off-site if 15% of all units affordable In lieu of payment permitted	None	Tax break for developer
<b>Boulder, Colorado</b>	1999 <sup>1</sup>	Approx. 50 of nearly 200 anticipated	No threshold #--applicable to all residential development	20% low-income in for-sale and rental developments <sup>2</sup>	Permanent affordability by deed restriction	Fee permitted for smaller developments; Half of for-sale units may be built off-site; Developers have flexibility with rental unit obligation <sup>3</sup>	None	Waiver of development excise taxes
<b>Davis, California</b>	1990	1474	Development exceeding 5 units	25% in for-sale developments <sup>4</sup> 25-35% in rental developments <sup>5</sup>	Permanent affordability for rental units No control period for for-sale units	In lieu of payment permitted for developments under 30 units, or other demonstration of "unique hardship"	25%	None
<b>Fairfax County, Virginia</b>	1991	1723	Development exceeding 50 units <sup>6</sup>	12.5% in single family home developments 6.5% in multi-family developments	15 years for for-sale housing 20 years for rental housing PHA may purchase 1/3 of all units to keep affordable	Not permitted	20% for single family units 10% for multi-family units	None
<b>Irvine, California</b>	1978	Over 3400	No threshold #--applicable to all residential development <sup>7</sup>	Voluntary goal: 15% of all units	20-30 years; determined case-by-case depending on financing	In lieu of payments and other alternatives to on-site units permissible <sup>8</sup>	25% <sup>9</sup>	None currently offered <sup>10</sup>
<b>Longmont, Colorado</b>	1995	104 of 352 anticipated	No threshold # <sup>11</sup>	10% of all units in annexation areas	No control period for for-sale units 5 years for rental units	May make in lieu of payment to Affordable Housing Fund Case-by-case consideration of off-site construction	Yes	Relaxed regulatory requirements <sup>12</sup>
<b>Montgomery County, Maryland</b>	1974	Over 10,000	Development exceeding 50 units	12.5-15% of all units Of these, PHA may purchase 33%, and qualified not-for-profits may purchase 7%	10 years for for-sale units 20 years for rental units	May request approval to make in lieu of payment or build affordable units off-site in contiguous planning area if low and moderate income residents will not be able to pay expected housing costs	Up to 22%	Waiver of water, sewer charge and impact fees. Offer 10% compatibility allowance and other incentives <sup>13</sup>
<b>Santa Fe, New Mexico</b>	1998	1 of 36 anticipated	No threshold # <sup>14</sup>	11% in developments targeted over 120% AMI <sup>15</sup> 16% in developments targeted over 200% AMI <sup>16</sup>	30 years for all units; 30 year period starts over with each new occupant	Not permitted, except in case of economic hardship	Bonus equals set-aside %. 16% in developments targeted under 80% of AMI <sup>17</sup>	Waiver of building fees

## Examples of Inclusionary Housing Program Characteristics

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- <sup>1</sup> Boulder had an prior inclusionary housing ordinance in effect in the 1980s and early 1990s. The current ordinance was designed to improve flaws in the former program.
- <sup>2</sup> Projects of 4 or fewer units may either provide one unit of affordable housing on or off-site, dedicate land for affordable housing, or make an “in lieu of” contribution. Boulder may negotiate affordable housing set-asides of up to 50% in projects built on annexed land; in such cases, the units are split evenly between low-income households and moderate-income households.
- <sup>3</sup> Developers of affordable rental units have flexibility with regard to the on-site/off-site mix, and the extent to which they may meet their obligation by donating land or dedicating pre-existing homes for low-income households.
- <sup>4</sup> 25% set-aside achieved through combination of on-site construction and land dedication.
- <sup>5</sup> 35% set-aside required for rental projects over 20 units; 25% set-aside required for projects between 5 and 19 units; set-aside achieved through on-site construction and land dedication.
- <sup>6</sup> Developers must pay a fee equal to 1% of sales prices if a development does not exceed 50 units. In addition to meeting the 50 unit threshold, housing must be developed at a density greater than one dwelling unit per acre in an approved sewer service area to trigger an affordable housing set-aside obligation.
- <sup>7</sup> The applicability of Irvine’s program is dependent upon city and federal funding availability. Compliance with its terms is a “goal,” not a strict requirement, though a city official reported that nearly all developments comply with the program.
- <sup>8</sup> Developers in Irvine may pursue a range of alternatives to construction of affordable units on-site. In addition to fees in lieu of construction, developers may provide land to not-for-profit developers of affordable housing, convert existing market rate housing into affordable housing, and extend the term of affordability on current affordable units.
- <sup>9</sup> California state law requires a 25% density bonus for developers of affordable housing. In Irvine, however, not many developers take advantage of this option.
- <sup>10</sup> Although Irvine currently offers no developer incentives other than a state-required density bonus, it has in the past (and will consider doing so again in the future) offered developers of affordable housing reduced parking requirements, reduced fees, reduced park land dedications, and expedited permitting.
- <sup>11</sup> All residential development on land annexed to the city triggers an affordable housing obligation.
- <sup>12</sup> Developers who construct affordable housing are eligible for regulatory incentives, including reduced parking requirements, smaller setback requirements, and reduced landscaping obligations.
- <sup>13</sup> Montgomery County permits developers to increase the sales prices of units by 10% to fund amenities that make the affordable units visually compatible with market rate units. Developers of affordable units also may build up to 40% attached units in an otherwise detached unit development, and they may receive some concessions on lot sizes that enable them to use their land more efficiently.
- <sup>14</sup> Santa Fe triggers an affordable housing obligation if any dwelling unit in a development is targeted to households with incomes over 120% of the area median income (AMI).
- <sup>15</sup> Homes targeted to households earning between 120 and 200% of area median income (AMI) are priced between \$240,000 and \$400,000.
- <sup>16</sup> Homes targeted to households earning in excess of 200% of area median income (AMI) are priced over \$400,000.
- <sup>17</sup> Homes targeted to households earning less than 80% of area median income (AMI) are priced under \$150,000.



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