



**TESTIMONY OF ADRIEN A. WEIBGEN BEFORE THE
NEW YORK CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES
ON MANDATORY INCLUSIONARY HOUSING (MIH)**

February 9, 2016

Thank you for the opportunity to testify today. My name is Adrien Weibgen, and I am a Staff Attorney at the Community Development Project of the Urban Justice Center, or “CDP.” CDP’s mission is to strengthen the impact of grassroots organizations in New York City’s low-income and other excluded communities. We partner with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice. As part of its work around neighborhood change, CDP works with its partners to advance policies that promote responsible, equitable development throughout the city.

CDP supports the City’s efforts to adopt a new Mandatory Inclusionary Housing policy to require developers to build permanently affordable housing as part of new construction in rezoned communities and on sites where a developer seeks added density. CDP has long advocated for a Mandatory Inclusionary Housing policy in New York City, and we feel strongly that developers who receive additional building rights must be required to set aside permanently affordable housing in exchange.

However, CDP has three significant concerns about the current draft of the policy and the way it interacts with the City’s rezoning plans. First, the City’s plan to adopt MIH while upzoning only low-income communities of color creates a huge risk of displacement. Though the City may view these issues as separate, they are deeply intertwined, and the City must adopt new strategies to combat the displacement that new development is likely to trigger. Second, for MIH to create more opportunities for low-income people, the City must commit to upzoning wealthy, high-opportunity neighborhoods, not only poor and working-class communities. To maximize the benefits of MIH and achieve the economic diversity the City claims is at the heart of the policy, the City must rezone wealthy communities, as well. Third, the City should create additional MIH options that will guarantee that a significant share of new affordable housing is accessible to New Yorkers with incomes below 30% AMI. Housing at this level should not just be an *option* that *could* happen through averaging within the Options thus far proposed by the City; it *must* be part of *every* MIH Option, including a new “deep affordability” Option, consisting of 30% of all units at 30% AMI. The income levels of the current MIH options skew far too high, and far beyond the income levels of the communities currently slated for rezonings.

Prevent Displacement

MIH can produce affordable housing only if developers build, and to produce significant amounts of affordable housing with MIH, the City plans to upzone up to 15 neighborhoods. But dramatically upzoning low-income communities creates a huge risk of displacement, because allowing far more building and bringing new resources to communities is likely to make these areas more attractive to wealthier residents, changing the housing market in a way that places low-income tenants at risk. Residents of communities like East New York and the South Bronx do not fear

change; they fear they will not be around to benefit from the changes that are coming. As rents in the community rise, landlords of rent-regulated buildings will have a huge incentive to harass and displace long-time, low-income tenants in an effort to move these apartments out of stabilization. Tenants of unregulated units can disappear even more easily if landlords double or triple their rents overnight.

MIH is only part of this puzzle, but the City should not act as though MIH and upzonings exist in a vacuum when MIH fundamentally depends on creating added density – density that will add fuel to the fire of gentrification and increase the risk of displacement in many communities. The City must adopt strategies to combat the displacement of both rent-regulated and unregulated tenants. One solution is citywide zoning text or legislation that would require landlords seeking to build or renovate to first obtain a Certification of No Harassment, a policy that currently exists in the Special Clinton District. The policy helps to *prevent* displacement by putting a high price on harassment. It also *creates* affordable housing by requiring landlords who harass their rent-regulated tenants to set aside part of their buildings as permanently affordable housing as a condition of receiving the permits they need to renovate or expand their buildings. Although the City’s investment in anti-displacement legal services is meaningful and important, these services will never be enough if the payout for harassing out tenants remains so high. The City should adopt an anti-harassment policy to break the cycle of harassment and displacement and assure longtime tenants that neighborhood change will not come at their expense.

The City must also think creatively about how to combat displacement of tenants in unregulated homes, who are incredibly vulnerable to displacement from communities like East New York, where over 50,000 residents live in unregulated homes. It is more difficult to protect the rights of tenants whose rents can escalate at any time, but ensuring that most of the new housing that’s built matches the needs and income levels of the current community is one way to stem the tide of rising rents and displacement. The City may find it challenging to balance the desire to build with the need to protect current low-income tenants from displacement, but the City cannot simply ignore the displacement problem and hope that the public forgets about it. MIH will only succeed at increasing housing opportunities for low-income people if the City develops meaningful strategies to prevent displacement.

Upzone Wealthy Communities

CDP also urges the City to commit to rezoning wealthy communities as part of its overall rollout of MIH and the rezonings. The City’s MIH policy study provides significant evidence of the benefits of programs that permit low-income people to access housing in wealthier, better-resourced areas. According to the City’s research, programs like these can increase adult employment rates, improve high school graduation rates, improve mental and physical health, and increase academic performance.¹ These findings are important and valuable, and they underscore the importance of

¹ The programs cited by the City include “the nation’s first mobility experiment ... the court-ordered relocation of Chicago Public Housing Authority residents from racially segregated, high poverty neighborhoods to communities with a higher degree of racial and economic integration,” a program found to increase adult employment rates and improve high school graduation rates; the HUD-sponsored Moving to Opportunity program, which “found that among households that moved to neighborhoods with lower poverty rates, adults had both physical and mental health improvements” and young girls had significant improvements in health and other outcomes, even years later; and a 2010 study of “the academic performance of students living in publicly-owned inclusionary housing units in Montgomery County, Maryland - one of the wealthiest counties in the nation and home to the country’s largest and oldest inclusionary housing program,” which found that students who attended the most advantaged schools far

creating affordable housing for low-income families in high-opportunity neighborhoods in the City. But so far, the City has named only low-income communities as target areas for rezonings – areas where the risk of displacement is greatest, opportunities are fewest, and the amount of subsidy required to make *any* development feasible is at its peak.

We urge the City to follow through on its own findings and commit to rezoning wealthier neighborhoods, including some of those in Manhattan and the inner-ring neighborhoods of Brooklyn and Queens, to ensure that MIH creates more opportunities for low-income families in well-resourced areas. The City’s current choice to rezone only poor and working-class communities is indefensible, especially since the City’s own economic studies show that developments in strong markets – unlike those in cooler markets – can sustain significant amounts of deeply affordable housing and remain financially viable without government subsidies. Because developers in wealthy areas can collect so much income from market-rate apartments, they can sustain more affordable units under MIH – and they should be pushed to do so. Rezoning wealthier areas is not only about creating more affordable units at less cost to the City – though that is, of course, what the MIH policy should aim to achieve. Rezoning wealthy areas will *also* serve to advance the City’s goal of economic diversity in *every* community – not only poor and working-class areas. To get more bang for its buck, create a greater number of affordable units, and reap the full benefits of the economic diversity the City has promised through MIH, the City must rezone rich areas as well.

Create Deeply Affordable Options

Finally, we urge the City to create a deep affordability option within MIH, and to ensure that every MIH option requires a significant share of units accessible at very low income levels. Currently, none of the MIH options require housing at affordability levels below 60% AMI, even though 85% of New Yorkers making under 50% of AMI are rent-burdened, and there are “14 times more rent-burdened households at 50% AMI and under, than at 100% AMI and up.”² New York City’s housing crisis is greatest for those below 50% AMI, but the City failed to even study MIH options with affordability levels below 60% AMI.

The income levels of affordable housing should meet the needs of the people in greatest need, and this must be written into the MIH policy. Even though HPD subsidies will be needed to spur construction in some neighborhoods and will help to make rents more affordable than the MIH text requires, these subsidies will not last forever and will not provide permanent affordability. Subsidies are also voluntary, and landlords are less likely to take them as neighborhoods change and market rents increase. Having lower income levels written into the zoning text is the only way to guarantee that these apartments *always* remain deeply affordable. CDP joins the Association for Neighborhood & Housing Development in calling for a set aside of 15% of units at the 30% AMI level for all MIH options, and a new MIH “deep affordability” option that requires 30% of units to be affordable at 30% AMI.

outperformed those who attended the least advantaged schools. *New York City Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods*, Dep’t of City Planning, City of New York (Sept. 2015), p.48-49.

² “ANHD Analysis of NYC Inclusionary Zoning Proposal,” ASS’N FOR NEIGHBORHOOD & HOUSING DEVELOPERS (July 31, 2015), <http://www.anhd.org/?p=7038>.

Although this new Option would not be feasible without subsidy in every neighborhood, that is no reason not to adopt it. First, “strong” and “very strong” markets would be able to support developments with significantly more and/or deeper affordability than any of the Options the City has thus far proposed, without additional subsidy.³ Second, the City has *already* proposed a range of Options that will not work without subsidy in every community, and the deep affordability Option is no different. This Option will simply increase the flexibility of the program and give the City an important additional tool to create permanently and deeply affordable housing in some areas. Finally, the City has committed to providing significant amounts of subsidy in the communities that have been identified for rezonings. Within that context, the logic that a deep affordability Option should not be adopted because it would require subsidy in some areas does not hold.

In closing, many of the groups who represent and are part of low-income and working-class communities of color in this City have come out in opposition to the MIH plan as proposed. The Administration’s approach so far has been to dismiss these concerns and suggest that these communities simply do not understand what the City is trying to accomplish with MIH. This position insults the intelligence and expertise of the people who stand to be most affected by these plans, whose objections are rooted in the fact that the current proposal – however progressive and well-intentioned – fails to meet the needs of the New Yorkers most in need of affordable housing. We urge the Council to continue listening to community members and working with them to improve the MIH proposal, including through the creation of both a deep affordability Option and a set-aside of at least 15% of all housing at 30% AMI for all MIH Options. We believe that if we work together, we can craft an improved MIH plan that will help make New York the truly equitable city all of us are fighting for.

³ “Mandatory Inclusionary Housing: Financial Feasibility and the Current City Proposal,” ASS’N FOR NEIGHBORHOOD & HOUSING DEVELOPERS (Nov. 2015), http://www.anhd.org/wp-content/uploads/2015/11/MIH-White-Paper-11-12-2015.pdf?utm_source=Blog-MIH+position-12-8-15&utm_campaign=Blog-MIH+position-12-8-15&utm_medium=email.