50 EAST 42ND STREET
SUITE 407
NEW YORK, NY 10017
*telephone* 212.286.9211
*facsimile* 212.286.9214
*web* chpcny.org

# A PROPOSAL TO ENHANCE TAX AND ZONING INCENTIVES FOR NEW HOUSING PRODUCTION

## A Policy Paper Produced by CHPC's

## Housing Finance Committee
## Zoning Committee

Citizens Housing and Planning Council of New York

November 2002

EXECUTIVE DIRECTOR
Frank Braconi

BOARD OF DIRECTORS
*President*
Marvin Markus

*Chairman of the Board*
James L. Lipscomb

*Secretary*
Sander Lehrer

*Treasurer*
Robert Borne

*Vice Presidents*
Shirley Bresler
Robert S. Cook, Jr.
William R. Ginsberg
Robert W. Jones
Deborah Lamm
Michael D. Lappin
Frances W. Magee
Hal K. Negbaur
Vincent L. Riso
Robert C. Rosenberg
Richard J. Scheuer
Flora Schnall
Robert W. Seavey
Ann Shipley
Richard C. Singer
Mark A. Willis
Louis Winnick

Mark Alexander
Debra C. Allee
Frank J. Anelante, Jr.
Naomi S. Bayer
Alan R. Bell
Stanley Berman
Robert F. Borg
Howard Chin
Peter Claman
Peter J. Davoren
Nina DeMartini-Day
Sylvia Deutsch
Ruth Dickler
Douglas D. Durst
William Frey
Mark E. Ginsberg
Elliott M. Glass
Simeon H.F. Goldstein
Colvin W. Grannum
Philip G. Grossman
Rosanne Haggerty
William N. Hubbard
Evelyn B. Kenvin
Christopher Kui
Carol Lamberg
Henry Day Lanier
Nicholas LaPorte, Jr.
Charles S. Laven
Robert O. Lehrman
Jeffrey E. Levine
Mark A. Levine
Kenneth K. Lowenstein
Marvin A. Mass
John McCarthy
Lucille L. McEwen
David McGregor
Howard D. Mendes
Ronay Menschel
Felice L. Michetti
Ron Moelis
Preston C. Moore
Daniel Z. Nelson
David L. Picket
Rebecca Robertson
Bernard Rothzeid
Peter D. Salins
Marian Sameth
Philip Schorr
Ethel Sheffer
Carole S. Slater
Ann M. Soja
David J. Sweet
Robert V. Tishman
Gerard F. Vasisko
Philip Weinberg
Adam Weinstein
Alan Wiener
David J. Wine
Barry Zelikson
Howard Alan Zipser

*CHPC's last annual financial report may be obtained by writing to CHPC or the Office of Charities Registration, 120 Broadway, New York, NY 10005*

**EXECUTIVE SUMMARY**

New York's housing production has been decreasing for decades; during the 1990s new production averaged only 8,250 units per year. With a growing population, the low rate of new construction has resulted in rising housing prices and a proliferation of illegal and substandard dwellings. City government and the public at large would like to see a higher level of housing construction, but budget concerns are likely to constrain housing subsidy programs in future years. It is consequently a propitious time to revisit the city's residential construction incentive programs in order to identify ways of stimulating housing production without direct subsidy.

The city's primary incentive program for new housing construction is the 421-a tax incentive program. This program 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.

Because in most areas of the city 421-a benefits are as-of-right, almost all new multi-family housing in those areas receive them. In the Manhattan Exclusion Area, where a 20 percent low-income component is required, developers have sought to couple them with tax-exempt financing from a government agency, usually the HFA or the HDC. Under federal law, tax-exempt financing also requires a 20 percent low-income component, so developers are often able to benefit from both programs (in addition to as-of-right Low Income Housing Tax Credits), making both benefits more attractive than they are individually. Since 1986, however, the authority of state and local governments to issue tax-exempt "private activity" bonds has been limited, so they are not always available even to developers who are willing to build "80/20" projects. The intention of this paper is to propose methods of making 421-a more effective as a stand-alone incentive, or to couple it with other benefits that are not constrained by federal law.

As a production incentive, the cost-effectiveness of the 421-a program has often been questioned but never adequately determined. That is because of the difficulty of proving the counter-factual: how much of the housing would have been built without the tax incentives? For buildings that would have been built in any event, the program is obviously not cost-effective: the city foregoes tax revenues that would have been otherwise collected and gets no additional housing for it. On the other hand, if the building would not have been built without the tax incentives, it is extremely cost effective: housing is produced at no public cost and, eventually, new tax revenues are realized. It is unlikely that a conclusive statistical answer to this question will ever be produced.

Another city incentive program is Inclusionary Housing, which is a zoning rather than a tax incentive. It has seldom been used. Applicable only to R10 zoning districts, it provides floor area bonuses to developers who build or rehabilitate low-income apartments. The bonuses differ depending on whether the low-income housing is rehabilitated or newly built, and on whether it is on-site or off. In the maximum case, the developer may, within the constraints of the maximum floor area that is permitted by law, increase the floor area of a residential project by four square feet for each square foot of low-income housing provided.

Some planners and zoning experts have objected to Inclusionary Housing on philosophical and legal grounds. They argue that density bonuses should only be given in return for public improvements that mitigate the adverse effects of the increased density. In the case of New York's inclusionary housing program, they argue that there is not a clear nexus between the density bonus awarded and the public benefit of low-income housing that is received in return. On the level of planning theory, this objection is legitimate. Inclusionary Housing has nevertheless been adopted in New York, and there appears to be a desire among both the development community and affordable housing advocates to see it energized.

This proposal also considers how inclusionary housing can be made a more effective stand-alone housing incentive. Both the 421-a and Inclusionary Housing analyses are presented, however, with an eye toward their compatibility and potentially mutually reinforcing potential. Other incentive programs, such as 421-b, Urban Development Action Area (UDAAP), and J-51 benefits could eventually be incorporated into a more comprehensive program, although this document does not cover those programs.

Sensible recommendations may facilitate the use of both the 421-a and Inclusionary Housing programs and thereby increase production of housing units without costing city dollars. The following are CHPC's recommendations, which are discussed in detail in the body of this paper:

421-a Partial Tax Exemption Program

- **Change the definition of "Eligible debt-financed project" in 28 RCNY § 6-01 that prohibits projects encumbered by a lien or mortgage from also obtaining 9 percent low income housing tax credits.**

- **Create more flexibility in the on-site program by establishing a sliding scale of set-aside percentages and tenant eligibility limits. Such a sliding scale would allow developers to match the affordability requirements to the specific site, market and financing requirements of their projects. In**

**addition, developers that set aside affordable units in accordance to the following scale might receive tax abatement similar to the benefits offered under the J-51 program.**

- **Repeal RPTL §421-a (2)(c)(iii) that requires five new dwelling units for every demolished unit in new constructions of more than 20 units. Allow all dwelling units that exceed the number of pre-existing units to be eligible for benefits.**

- **Repeal the "initial adjusted monthly rent" formula [RPTL §421-a (3)] that applies to all except the affordable units.**

INCLUSIONARY ZONING

- **Adjust the bonus formulas so that developers can attain the maximum floor area bonus by providing different combinations of low-, moderate- and middle-income affordable units.**

- **Expand the Inclusionary Housing Program to include R7, R8, and R9 districts on wide streets, with a bonus award cap of no more than 20 percent of the standard allowable floor area ratio.**

- **Expand the program to incorporate commercial floor area bonuses in mixed-use districts, in exchange for affordable housing provision.**

- **Remove the restriction barring developments receiving real estate tax exemptions or operating assistance from receiving Inclusionary Housing floor area bonuses.**

- **Remove the restriction barring the use of rents from affordable units towards the principal or interest owed on any debt other than that incurred from capital improvements to the affordable units.**

- **Remove the restriction requiring that the affordable units be managed by a non-profit organization.**

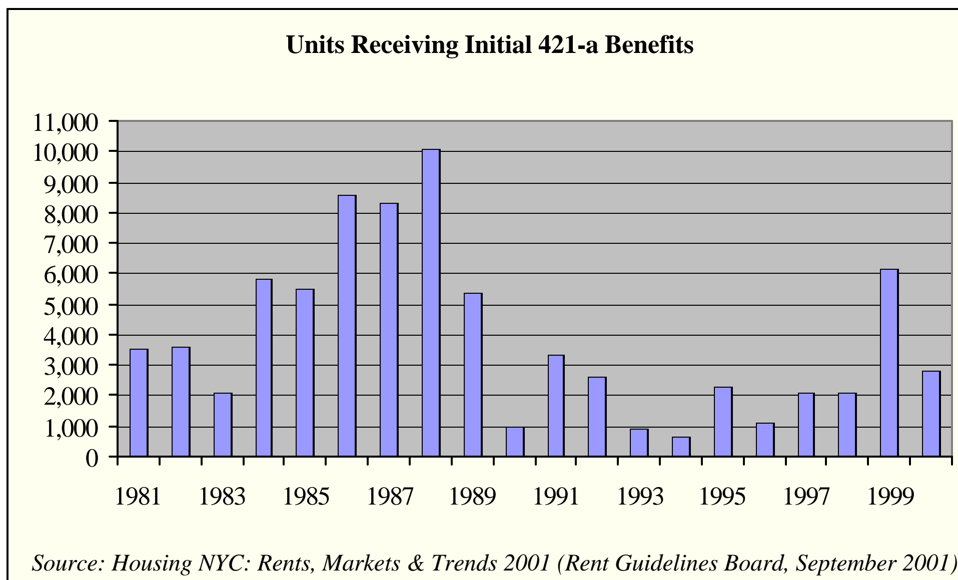
- **Remove the restriction requiring that no single story in a building receiving a floor area bonus contain more than two affordable units unless 80 percent of all stories contain two or more affordable units.**

# I. 421-a Tax Benefits

*Background*

In response to New York's diminishing housing production, the State Legislature added Section 421 to the Real Property Tax Law in 1971, a tax incentive program for multifamily residential housing. New residential construction on vacant, predominantly vacant, or under-utilized land or land improved with a nonconforming use was given a tax exemption on the increased value during the period of construction and for 10 years thereafter. In exchange for the tax break, the residential units had to be leased at 15 percent less than market rents and were subject to rent stabilization throughout the benefit period.

In 1985, the State Legislature fundamentally changed the statute in order to allay fears that luxury developers were unnecessarily benefiting from the 421-a program as well as to further enhance production incentives in Northern Manhattan and the other boroughs. The three most significant amendments were the mapping of the Manhattan Exclusion Area (roughly defined as south of 96th street, north of Houston Street on the west, and north of 14th Street on the east), the expansion of the benefit period to up to 25 years, and the limitation of the construction period exemption to three years maximum. The State Legislature has since made technical alterations to the 421-a program and must periodically extend the provisions of the program. Currently, to receive 421-a benefits, the construction must commence before December 31, 2007.




**Units Receiving Initial 421-a Benefits**

*Source: Housing NYC: Rents, Markets & Trends 2001 (Rent Guidelines Board, September 2001)*

According to the Finance Department's *Annual Report on Tax Expenditures* for fiscal year 2001, real estate tax expenditures were valued at $1.6 billion. The 421-a program represented a relatively small proportion of that, providing developers with $111.3 million in tax benefits for 32,449 housing units. Approximately 46 percent of the 421-a units were rentals and the rest condominiums and co-operatives.

**421-a Tax Expenditures, FY 1998-2001**
**($ Million)**

| | FY 1998 | | FY 1999 | | FY 2000 | | FY 2001 | |
|---|---|---|---|---|---|---|---|---|
| | # of Units | Tax Expenditure | # of Units | Tax Expenditure | # of Units | Tax Expenditure | # of Units | Tax Expenditure |
| **421-a Program** | **45,333** | **$81.4** | **38,998** | **$74.9** | **38,078** | **$104.3** | **38,190** | **$110.0** |
| 10-year Exemption | 20,612 | $34.1 | 13,373 | $25.7 | 8,688 | $31.0 | 6,719 | $27.6 |
| 15-year Exemption | 15,721 | $25.8 | 16,171 | $25.8 | 17,238 | $28.5 | 17,370 | $26.2 |
| 20-year Exemption | 1,367 | $7.2 | 1,633 | $9.8 | 4,138 | $29.9 | 5,160 | $38.9 |
| 25-year Exemption | 7,633 | $14.2 | 7,821 | $13.7 | 8,014 | $14.9 | 8,941 | $17.3 |

*Source: IBO's Multiple-Dwelling History File based on Finance Department's Residential Property Assessment Database*

*Geographic Eligibility*
Developments receive a tax exemption on the increased value during the construction period (for a maximum of three years) as well as for ten to twenty-five years following the completion of construction, depending on the project's location.

Developers in the Manhattan Exclusion Area can receive 421-a benefits only if they build affordable units on-site or if they finance off-site affordable units. Under the 421-a Affordable Housing Program, projects in core Manhattan are eligible if 20 percent of the units are set aside as affordable housing for low- and moderate-income families. In exchange, the projects receive tax exemptions for 20 years (12 years at full tax exemption and 8 years of phase-out).

Core Manhattan developers can also receive 421-a benefits if they finance affordable units elsewhere within the city. Under the 421-a Affordable Housing Program, HPD grants five "negotiable housing certificates" for every housing unit designated for low-income households (60% or less than the median area income) or four certificates for every unit designated for moderate-income families (80% or less than the median area income). Developers can either produce affordable housing outside of the Exclusion Area thereby generating Housing Certificates for their Manhattan projects or they can purchase them from affordable housing developers. Each housing certificate provides a 10-year tax exemption (2 years at

full exemption and 8 years of phase-out) for one 1,200 square feet, market-rate unit in the Exclusion Area.

**Distribution of 421-a Units & Expenditure by Borough**
**FY 2001**

| | NYC | Bronx | Brooklyn | Manhattan | Queens | S.I. |
|---|---|---|---|---|---|---|
| **# of Exemptions** | **20,975** | 1,535 | 5,310 | 4,872 | 6,612 | 2,646 |
| **# of Units** | **32,449** | 2,948 | 6,195 | 11,837 | 8,720 | 2,749 |
| **Tax Expenditure** | **$111.3 m** | $4.1 m | $10.2 m | $73.9 m | $20.3 m | $2.8 m |
| **Per Unit Expenditure** | **$3,430** | $1,391 | $1,646 | $6,243 | $2,328 | $1,019 |

***Source: Finance Department's Annual Report on Tax Expenditures, FY 2001***

Residential developments in Northern Manhattan (above 110th street) and in all of the other boroughs receive "as-of-right" 421-a benefits for a period of 15 years (11 years at full exemption and 4 years of phase-out). If the project is in a Neighborhood Preservation Area (as defined in 28 RCNY §5-10), was eligible for mortgage insurance under the Rehabilitation Mortgage Insurance Corporation (REMIC) as of May 1992, or designates 20 percent of the units for low- and moderate-income households, it can receive 25 years of tax exemption (21 years at full exemption and 4 years of phase-out).

In addition, the 421-a rules impose restrictions on the way a project can be financed. Any lien on the project is subordinate to the Written Agreement between HPD and the developer and the average household income of the units in the project cannot exceed 80 percent AMI. Most restrictive of all, if a project is carrying debt, it cannot receive federal low income housing tax credits at the 9 percent reservation. This third limitation most heavily affects affordable developments in the outer boroughs where raising equity is already difficult.

The 421-a Affordable Housing program facilitates the financing of affordable housing outside of Manhattan. Each Negotiable Certificate was originally expected to sell for $15,000-20,000 thereby providing much needed equity for affordable projects in the boroughs but they are currently selling at approximately $10,000. Often times, a project selling Negotiable Certificates and receiving 9 percent tax credits may still need bank financing to become a reality.

**Recommendation: Repeal the definition of "Eligible debt-financed project" in 28 RCNY § 6-01 that prohibits projects encumbered by a lien or mortgage from also obtaining 9 percent low income housing tax credits.**

*Affordability Requirements*

For projects in the Manhattan Exclusion Area to qualify for 20-year 421-a tax exemptions, or for projects elsewhere in the city to qualify for 25-year exemptions, 20 percent of the units on site must be set aside as affordable housing.[1] The apartments must be rented to eligible families earning no more than 80 percent of the area median income and the rents can be no more than 30 percent of the annual income of those families. The apartments must be maintained as affordable for a minimum of 20 years or for as long as the project receives the tax exemptions, whichever is longer.

The 80-20 configuration has proven most appealing to developers who are able to finance their projects with tax-exempt bonds issued by a state or city housing finance agency. On-site affordable housing, whether within the Exclusion Area or not, has rarely been built under 421-a when the project is not receiving tax exempt financing. In Manhattan, the apartments are often too valuable to be set aside for low-income tenants even if tax exemptions are provided, and in the other boroughs, it is often difficult enough to attain economically feasible rents even with a fully market-rate project.

Another problem with the affordability provisions of 421-a is that the 20 percent requirement is too inflexible to accommodate the wide variety of market conditions found in New York City. The proportion of affordable units cannot be, say 10 percent, and there is no advantage to a developer who might be willing to provide, say, 30 percent. Furthermore, no benefit can be derived from providing affordable housing units to households above 80 percent of median area income. Thus, 421-a developers cannot tap the huge market represented by households earning above 80 percent of median but below what is necessary to rent new market-rate apartments, and few middle-income New Yorkers can benefit from new rental housing construction.

**Recommendation: Create more flexibility in the on-site program by establishing a sliding scale of set-aside percentages and tenant eligibility limits. Such a sliding scale would allow developers to match the affordability requirements to the specific site, market and financing requirements of their projects. In addition, developers that set aside affordable units in accordance to the following scale might receive tax abatement similar to the benefits offered under the J-51 program.**

[1] RPTL §421-a (2)(ii)(A)(C), RPTL §421-a (2)(iii)(A)(D), and RPTL §421-a (2)(iv)(A)(b).

**Such a schedule might look like:**

| Proportion of Units Affordable | Maximum Household Income of Lessees |
|---|---|
| 10% | 60% |
| 20% | 80% |
| 30% | 100% |
| 40% | 120% |
| 50% | 140% |
| 60% | 160% |
| 70% | 180% |
| 80% | 200% |
| 90% | 220% |
| 100% | 240% |

*Construction Requirements*

Under 421-a, eligible projects must be a new multiple-dwelling of three or more units on vacant, predominantly vacant, or under-utilized land or land improved with a nonconforming use. Under-utilized land, when improved with non-residential buildings outside of the Exclusion Area, is defined as: (1) any zoning lot which is built to no more than 75 percent of the maximum floor area permitted for residential buildings in the district or (2) has an assessed value no greater than 75 percent of the assessed valuation of the land on which the building is situated.[2] Construction must begin before December 31, 2007 and the developments cannot concurrently receive tax exemption or tax abatement under any other local or state law.

The 421-a statute imposes additional restrictions on larger developments even when the project is entirely market rate. Developments of more than 100 dwelling units must have at least 10 percent of the units with two bedrooms (4 ½ rooms) or more and another 15 percent must be one bedroom (3 ½ rooms) apartments. Although those requirements would usually be satisfied in any event, they may be a barrier to niche products, such as assisted housing, from receiving 421-a benefits. For developments that designate on-site affordable units, city regulations explicitly require that such units be substantially similar to market-rate units in terms of square footage and the proportion of studios, 1BRs, 2BRs, etc.[3]

[2] Definitions of under-utilized differ for sites within the Exclusion Area and sites improved with residential structures.

[3] 28 RCNY §6-08 *Affordable Housing Construction Requirements.*

More importantly, if new construction occurs on a site that was previously improved with a residential building and the new development has more than 20 units, the ratio of newly built to demolished units must be at least 5 to 1. It is not clear why this ratio is set so high, or why it is preferable to simply providing benefits on the net increase in units.

**Recommendation: Repeal RPTL §421-a (2)(c)(iii) that requires five new dwelling units for every demolished unit in new constructions of more than 20 units. Allow all dwelling units that exceed the number of pre-existing units to be eligible for benefits.**

*Rent Regulation*

In exchange for the tax benefits, the Tax Incentives Programs division (TIP) of HPD sets the maximum initial rents for all units in a 421-a building according to a complex, statutory formula.[4] However, a different rent-setting standard applies to units designated as affordable for low- and moderate-income households. Units rented to low-income households cannot exceed 30 percent of 55 percent of area median income while units rented to moderate-income families cannot exceed the average of 30 percent of 75 percent of area median income.

In addition, rental units in 421-a projects are subject to rent stabilization for the duration of the exemption period regardless of whether the unit is market rate or affordable. For the "market rate" units, during the period of gradual diminution of tax exemption, the statute allows owners a 2.2 percent rent increase independent of any escalation authorized by the Rent Guidelines Board. Once the tax benefits expire, the law permits the rents to rise to market level even while the tenant is in place. Considering the high rent levels that are permitted even under the 421-a initial monthly rent formula, and the high incomes of the families (or organizations) typically renting them, the public purpose accomplished by this requirement is dubious. However, units designated as affordable are rent stabilized for 20 years or for the duration of the exemption period, whichever is longer, can only go to market rates gradually and only when the unit becomes vacant.

**Recommendation: Repeal the "initial adjusted monthly rent" formula [RPTL §421-a (3)] that applies to all except the affordable units.**

---

[4] RPTL § 421-a (3) establishes the initial adjusted monthly rent as follows:
Total expenses (annual cost of operation and maintenance, contingency reserves, management fees, property taxes, 14% of total project cost) **minus** the annual income derived from any floor area of commercial, community facilities, and accessory use space **divided** by the project's room count **divided** by 12 months; this formula results in an initial adjusted monthly rent per room. A dwelling unit's initial monthly rent is calculated by multiplying the adjusted monthly rent per room by the number of rooms in that unit.

# II. Inclusionary Housing

*Background*
New York City's Inclusionary Housing Program is a voluntary incentive program enacted in 1987 in response to the shifting of the income mix in high-density neighborhoods. Floor area bonuses are provided to developers in exchange for the creation of affordable units in R10 districts, excluding those in Manhattan Community District seven. Administrative, financial, and site restrictions also apply.

R10, with a maximum FAR of 10.0, is the highest-density residential designation, and is found primarily in Manhattan south of 96th Street. Inclusionary Housing is not applicable to commercial or manufacturing zones with R10-equivalent residential densities.

Bonus square footage is granted on a sliding scale, according to the type and location of the affordable units. New, on-site units receive the maximum bonus, while lower bonuses are granted to off-site or rehabilitated units. Off-site units must be located either within the same community district as the development receiving a floor area bonus, or in an adjacent community district at a site no farther than one half mile from the compensated development. The total floor area ratio of a development participating in the Inclusionary Housing program cannot exceed FAR 12.0, as per state law restricting the density of residential developments.

Few units have been created under the program: only 418 units have been completed since 1987, and as of January 2002 an additional 151 units were under construction. The lack of activity is due in part to the R10 limitation, but also to cumbersome and restrictive program regulations. The following recommendations are intended to strengthen Inclusionary Housing as a stand-alone program, and to facilitate its use in coordination with other incentive programs.

If Inclusionary Housing and 421-a could be used jointly, there could be a synergistic effect in stimulating housing development. In the Manhattan Exclusion Zone, a developer could draw on the bonus floor area in order to meet the affordable housing requirements for receiving 421-a benefits. Outside of core Manhattan, the incentive for doubling up would be an extension of the tax exemption period from the minimum of 15-years to the maximum of 25-years, as well as the density bonus. In each case, the affordable units would supplement, rather than replace, market-rate housing units.

*Requirements for Affordable Units*
Under the laws and regulations authorizing tax-exempt bonds, 421-a benefits, and the Low Income Housing Tax Credit, developers are required to maintain affordability standards only during the years when tax exemptions are granted or

for some other finite period, and may increase rents in the affordable units to market-rate once the affordability requirements are satisfied. The affordability requirements for the Inclusionary Housing program are permanent, since the density bonus is presumably permanent.

Nevertheless, Inclusionary Housing is inherently more flexible than 421-a in that a developer does not have to provide a fixed percentage of affordable units in order to receive the maximum bonus. For on-site new construction, four square feet of total floor area is obtained for each square foot of affordable housing. In most scenarios, the percentage of the total units required to be set-aside for low- or moderate-income households is significantly less than the 20 percent required in applicable 421-a cases.

The affordable units created as part of the program are capped at an annual rent that is no more than 30 percent of the annual income of households earning a maximum of 80 percent of the SMSA median. Average annual rents of the affordable units cannot exceed the annual operating cost for those units, and revenue from those rents cannot be applied to debt service.

As with other affordable housing programs, on-site lower income units must be distributed evenly throughout buildings receiving density bonuses or other incentives. Specifically, no more than two affordable units may be placed on any single floor unless 80 percent of all floors in a building contain two or more affordable units. The rationale behind placement restrictions is to ensure that the affordable units are of comparable quality and appearance as market-rate units, and to prevent the stigmatization of households living in affordable units. In the context of the Inclusionary Housing program, however, the traditional rationale is less appropriate.

The total number of affordable units provided in order to achieve the maximum possible density bonus is relatively small in relation to total units within a development, and the risk of creating an easily distinguished “clustering” of affordable units less severe. Placement restrictions may also deter developers from participating in the program by negating the economic value of the floor area bonus. Units located on higher floors of larger residential buildings are generally more valuable that those located on lower floors; as a result, the revenue lost by offering higher-floor units at below-market rents can exceed the potential value of the bonus floor area.

**Recommendation: Remove the restriction requiring that no story in a building receiving a floor area bonus contain more than two affordable units unless 80 percent of all stories also contain two or more affordable units, allowing developers to maximize the economic value of the floor area bonus.**

**Recommendation: Adjust the bonus formulas so that developers can attain the maximum floor area bonus by providing different combinations of low-, moderate- and middle-income affordable units. A flexible schedule may look something like:**

| Maximum Household Income For Affordable Units | Ratio of Total Additional Floor Area to Affordable Floor Area |
|---|---|
| 80% of Area Median Income | 3 square feet per 1 square foot |
| 81% to 120% of Area Median | 2 square feet per 1 square foot |
| 120% to 240% of Area Median | 1 square foot per 1 square foot |

*Geographic Restrictions*

The most restrictive program requirement is that only developments in R10 districts may participate. While recent zoning actions in Long Island City and downtown Brooklyn created several new R10 districts, the majority of R10 districts are high-rent Manhattan areas where sites are scarce. Community District 7 in Manhattan is excluded from the program; no R10 building may exceed FAR 10 in that district.

Including the moderate to high-density R7, R8, and R9 districts if the site is on a wide street (defined in the Zoning Resolution as 75 feet or more in width) would extend the program to areas where vacant and underutilized land is more available, and where planning considerations might indicate that an increased residential density is desirable. Inclusionary Housing floor area bonuses could be used independently or in conjunction with the Quality Housing Program in those districts. The program could also be expanded to mixed-use and manufacturing districts where residential development is permitted as-of-right, or by special permit.

**Recommendation: Expand the Inclusionary Housing Program to include R7, R8, and R9 districts, with a bonus award cap of no more than 20 percent of the standard allowable floor area ratio. In an R8 district the current maximum FAR of 5.99 would be increased to 7.18; in an R7 district, maximum FAR would increase from 3.3 to 3.96[5].**

**Recommendations: Expand the program to incorporate commercial floor area bonuses in mixed-use districts, in exchange for affordable housing provision.**

[5] FAR bonuses are presented based on maximums for developments not participating in the Quality Housing Program. For an R8 development participating in the Quality Housing Program concurrently with Inclusionary Housing, the maximum FAR would increase from 6.02 to 7.2. In R7 districts the increase would be from 3.44 to 4.12.

*Financing & Administrative Restrictions*

Developments receiving tax abatements or operating assistance in return for providing low-income housing are not currently eligible for the Inclusionary Housing program unless such assistance is limited to the affordable units only, and not the development in its entirety. They are also restricted from applying rents received from the affordable units to the payment of the principal or interest owed on any debt other than that which is incurred as a result of capital improvements on the affordable units after the date of initial occupancy.

There is little justification for either of these restrictions: participation in multiple incentive programs requires no local government expenditures; and the combination of incentives could attract the participation of developers who would not otherwise have participated in either program. Rents from the affordable units should be applicable to any outstanding debt held in connection with construction of either the affordable units or the compensated development.

In addition to the financial restrictions, developers are required to contract a non-profit organization to manage and oversee the affordable units, or prove to HPD that some other plan of action has been established to ensure that affordability requirements and housing quality standards are met. This requirement increases the operational costs of the entire development, and reduces the value of the floor area bonus. The management guidelines for the Inclusionary Housing program should coordinate with those established under 421a, LIHTC, or other tax exemption programs.

**Recommendation: Remove the restriction barring developments receiving real estate tax exemptions or operating assistance from receiving Inclusionary Housing floor area bonuses.**

**Recommendation: Remove the restriction barring the use of rents from affordable units towards the principal or interest owed on any debt other than that incurred from capital improvements to the affordable units.**

**Recommendation: Remove the restriction requiring that the affordable units be managed by a non-profit organization.**

**CHPC's Housing Finance Committee:**
**Marvin Markus, Chair**
**Frank Anelante**
**Robert Berne**
**Shirley Bressler**
**Howard Chin**
**Gale Kaufman**
**Henry Lanier**
**Charles Laven**
**Sander Lehrer**
**Ken Lowenstein**
**John McCarthy**
**Michael Slattery**
**Barry Zelikson**

**CHPC's Zoning Committee:**
**Robert Cook, Chair**
**Debra Allee**
**Robert Berne**
**Sylvia Deutsch**
**Mark Ginsberg**
**Mark Levine**
**Ken Lowenstein**
**Hal Negbaur**
**Bernard Rothzeid**
**Ethel Sheffer**
**Carole Slater**
**Michael Kwartler**
**Marcie Kessner**
**Gerard Vasisko**

**CHPC's Policy Staff:**
**Frank Braconi**
**Martha Galvez**
**Kimberly Miller**
**Elaine Toribio**