



**THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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**MANDATORY INCLUSIONARY HOUSING AND
THE EAST NEW YORK REZONING:**

AN ANALYSIS

By

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I. Executive Summary

In an effort to address the City's ongoing affordable housing crisis, the New York City Planning Commission is currently proposing a series of zoning changes, including Mandatory Inclusionary Housing (MIH) and Zoning for Quality and Affordability (ZQA), for potential application in communities across the city. One neighborhood targeted for significant redevelopment is the East New York/Cypress Hill area of Brooklyn. While many Community Boards have already expressed a variety of concerns about the proposed rezonings, the ultimate question comes down to this: does the proposal help or hurt the existing affordability crisis—in East New York and across the five boroughs?

To assess the potential impact on East New York, the Comptroller's office has examined the Draft Environmental Impact Statement (DEIS) for the East New York plan and the Housing and Development Corporation's Market and Financial Study of NYC Mandatory Inclusionary Housing.

In sum, while there will always be powerful market forces that put renters at risk of displacement, the City's own data shows that the current plan could inadvertently displace tens of thousands of families in East New York, the vast majority of whom will be unable to afford the relatively small number of new units that will be built.

Specifically, this report concludes that:

- 84 percent of residents in East New York and the surrounding communities will be unable to afford the market rate housing units proposed under the rezoning, and 55 percent will be unable to afford the affordable units.
- There are currently 21,788 market-rate units—non-NYCHA units that are not subject to rent stabilization—which are home to 49,266 low-income residents in East New York and the surrounding communities.¹ The rezoning would place these residents at an increased risk of displacement by creating new rental pressures on existing residents through the introduction of thousands of new higher income residents.
- The DEIS projects that the combination of mandatory inclusionary housing and a series of additional subsidies will produce 3,447 affordable housing units in the neighborhood. However, only half of these affordable housing units will have a community preference, netting as few as 1,724 affordable housing units for current residents.²

Under a more conservative estimate which focuses on the effects of rezoning alone, as few as 1,896 affordable housing units could be produced, with only half of those (948) set aside for residents of the local community through community preferences in the City's affordable housing lotteries.

¹ This includes the Primary and Secondary Study Areas likely to be affected by the proposed rezoning.

² City policy dating to the 1980s states that half of the apartments in a low-income housing development receiving city subsidies be rented to residents already living in the same community district. The Anti-Discrimination Center of Metro New York is currently challenging this "community preference." See: <http://www.antibiaslaw.com/sites/default/files/Complaint.pdf>.

Regardless of the methodology used, the anticipated number of new affordable housing units is simply not enough to mitigate the increased economic pressures on the residents of the neighborhood's 21,788 unprotected units. Even under the more optimistic scenario, if every affordable housing unit was reserved for those in the community, low-income residents in more than 20,000 units would still be at risk for displacement.

Rather than continuing on the current path, the City should rethink its current proposal and create a more well defined and targeted plan. The new plan should follow these basic principles:

1. Target density to sites primed for affordable housing

The City should abandon its one-size-fits all approach to rezoning and instead create a more targeted plan that upzones, or adds density, on a more limited basis. Specifically, the City should focus on upzoning development sites that have been identified in advance by HPD and developers to ensure that the City can increase the number of units that the community can afford.

2. Ensure affordability for existing, low-income residents

The majority of residents of East New York make less than 40 percent of the area median income (AMI)—a flawed metric that fails to take into account vast differences across the NYC metro area. The City should target the affordable housing income levels to the local community rather than a citywide standard. Under the current plan, 55 percent of residents in East New York and the surrounding communities cannot afford the so-called affordable housing units, which are pegged to citywide AMI thresholds. The City should create a more customized benchmark that more adequately reflects a community's median income levels. There is nothing “affordable” about a housing plan that is beyond the reach of more than half the community.

3. Protect existing residents from harassment and displacement

In neighborhoods like East New York and Cypress Hills, there are smaller percentages of rent-protected units due to the building types. The City should establish clear, enforceable rules prohibiting harassment of existing tenants to reduce the threat of displacement, including but not limited to the “certification of no harassment.” This protection is already in place in other neighborhoods in the city, including Greenpoint/Williamsburg in Brooklyn and Hell's Kitchen/Clinton in Manhattan, and severely penalizes landlords who have participated in harassment by requiring additional affordable housing to be developed.

II. Review of Plan

1. Those At Risk of Displacement

In order to understand the potential impacts of new density in East New York/Cypress Hills, the DEIS makes assumptions about the population at risk of displacement from demolition and indirect displacement caused by rising rents in the neighborhood. The proposed rezoning will result in a comparatively small number of units directly demolished, with impacts reaching 53

units containing 158 residents. However, a greater number of units are at risk of indirect displacement due to the large number of market rate units in the area.

According to the DEIS, there are 1,742 rent regulated units in the primary study area and 1,681 rent regulated units in the secondary study area. These 3,423 units contain approximately 10,235 residents that may face increased harassment and pressures to relocate.³ Over the past seven years, the number of rent-stabilized units in the 37th Council district (which includes part of East New York and the surrounding communities) fell by more than 14 percent—the eighth largest decline among the City’s 51 Council districts.⁴ However, this analysis presumes that New York’s rent stabilization laws will help protect these tenants from displacement, so they were not included in the Comptroller’s analysis.

However, there are approximately 5,172 unprotected dwelling units in the rezoning area, containing approximately 12,635 low-income residents.⁵ In the surrounding neighborhood, there are an additional 16,616 unprotected units containing approximately 36,631 low-income residents. These residents are defined by the DEIS as not being able to afford to pay substantial rent increases.

In total, there are 21,788 unprotected units with 49,266 residents at risk of displacement. These units are non-NYCHA units and are not subject to rent stabilization. Therefore, they are subject to market-rate rental increases and do not have lease renewal rights.

In short, while East New York is currently home to many apartments that are affordable to a wide variety of income levels, the neighborhood lacks the protections afforded by widespread stabilization and is thus particularly vulnerable to upward pressures in the rental market.

2. Impact of Rents on Existing Population

To determine the potential impact of displacement, one must determine if existing residents will be able to afford the neighborhood’s market rate units or whether the rezoning will introduce new populations from outside of the neighborhood. Limited new development has occurred in East New York and therefore it is difficult to create a sample size of comparable rents based only on the local development.

However, the Market and Financial Study of NYC Mandatory Inclusionary Housing determined market rate rents in areas based on market strength and building type. The study identified Cypress Hill as Middle Market and East New York as Moderate. In these markets, buildings constructed after 2009 are assumed to have market rate rents based on the table below. The range in rents reflects the presence of low-rise buildings on the low end of the rent spectrum, and mid-rise buildings on the high end—the two general building types proposed in East New York Rezoning.

³ DEIS Chapter 3, Table 3-23

⁴ <http://iquantny.tumblr.com/post/125485105679/rent-stabilized-housing-is-disappearing-fast>.

⁵ The DEIS does not specify its definition of “low-income”. The Comptroller’s Office assumed any unit occupied by residents making less than 100 percent of the AMI were classified as “low-income.”

RENTS IN NEW CONSTRUCTION MIDDLE AND MODERATE MARKETS

Market type	Studio	1 Bedroom	2 Bedroom
Moderate	\$1,523-\$1,550	\$1,865-\$1,899	\$2,319-\$2,362
Middle	\$1,745-\$1,777	\$2,402-\$2,445	\$3,078-\$3,134

Source: Table 4 of the Market and Financial Study of NYC Mandatory Inclusionary Housing

The average household size of Community District 5, which covers East New York, is 2.99 residents. Therefore, many displaced households would most likely need a 2-bedroom apartment to avoid crowding. Assuming residents pay 30 percent of their yearly income on rent, which is a generally accepted threshold for housing affordability, the market rate 2-bedroom units in new buildings would be affordable to three person households earning \$83,484 to \$112,824. Reflected as a percentage of the City's Area Median Income (AMI), these income ranges are affordable to people making between 107% and 145% of the AMI.

The DEIS used Public Use Microdata Areas (PUMA) 4007 and 4008 to determine incomes in the neighborhood. Using City Planning's PUMA area summaries, the estimated income for East New York, Cypress Hills, and the surrounding community from 2008-2012 was:

INCOME LEVELS FOR STUDY AREAS

Household Incomes	Percent of AMI for Family of 3	4007	4008	Sum	Percent
Less than \$10,000	Less than 13%	9,328	10,415	19,743	21%
\$10,000 to \$14,999	13%-19%	4,725	4,255	8,980	10%
\$15,000 to \$24,999	19%-32%	5,704	6,206	11,910	13%
\$25,000 to \$34,999	32%-45%	4,761	5,678	10,439	11%
\$35,000 to \$49,999	45%-64%	5,647	7,215	12,862	14%
\$50,000 to \$74,999	64%-97%	5,439	7,967	13,406	15%
\$75,000 to \$99,999	97%-129%	2,994	3,310	6,304	7%
\$100,000 to \$149,999	129%-193%	2,441	3,669	6,110	7%
\$150,000 to \$199,999	193%-257%	687	632	1,319	1%
\$200,000 or more	Greater than 257%	382	436	818	1%
		42,108	49,783	91,891	100%

Source: http://www.nyc.gov/html/dcp/pdf/census/puma_econ_10to12_acs.pdf - bk05

Based on this data, 84 percent of the population of East New York, Cypress Hill or the surrounding community will not be able to afford the new 2-bedroom market rate apartments. As such, the new market rate units will do little to help in mitigating the indirect displacement, and instead will likely draw new populations to the neighborhood. Therefore, the only units that may prevent indirect displacement are the affordable housing units.

The Mandatory Inclusionary Housing for East New York assumes that 25% of the units will be affordable to people earning 60% of the AMI. The zoning allows the units to average 60% of the AMI and therefore theoretically some units could be affordable to people earning less than 60% and others to people earning more. For example, 50% of the affordable units could be set to 50% of the AMI, and 50% of the affordable units could be affordable for people earning 70% of the AMI.

However, for simplicity, the Comptroller's analysis assumes that all units will be made affordable to an average of 60% of the AMI (\$46,620 for a three-person household). These units will produce a rent of \$1,295. The median income in the study area was \$32,815.⁶ **Based on the income levels in the above chart, over 55% of neighborhood residents earn too little to afford the plan's affordable units.**

There is nothing "affordable" about a housing plan that is beyond the reach of more than half the community.

3. Total Units to be Created

The DEIS makes assumptions on which developments are most likely to move forward to determine the potential impacts of a rezoning. This is compared to the "no action scenario" that determines how much development will occur in the community if the rezoning does not move forward. In East New York, the DEIS assumed that 50% of all units will be affordable housing due to the inclusion of other programs other than Mandatory Inclusionary Housing. The potential number of newly constructed units proposed to be created with the rezoning compared to current as-of-right zoning is listed in the table below:

DEVELOPMENT ASSUMED IN DEIS

Unit Type	No Action	With Action	Net-difference
Market Rate	550	3,415	2,865
Affordable	0	3,447	3,447
Total Residential Development	550	6,862	6,312

Sources TABLE 1:2 East NY DEIS

However, even that number might be overly optimistic. As the City has acknowledged, creating 3,447 affordable units will require subsidies from the City's Housing Preservation and Development Corporation that are separate and apart from any zoning proposal. To date, the subsidy plan has lacked specifics. For instance, aside from one city-owned lot, it is not clear which development sites will accept these subsidies.

If the new subsidies fail to adequately incentivize developers to build additional affordable housing, and the City must rely on the rezoning alone far fewer affordable units may be produced.

Given this uncertainty, the City must assume that only the units solely attributable to the Mandatory Inclusionary Housing program will be built as affordable. In order to estimate the

⁶ Table 3-10 DEI

true minimum number of affordable housing units that will be required to be developed, the Comptroller's office has prepared a conservative estimate using DEIS data. Of the 81 potential developments, all but one was assumed to have 25% affordability as required by the zoning text amendment, with the exception of "Site A." "Site A" (Block 4142), a city-owned site, was assumed to be developed at 50% affordable, as is indicated in the DEIS.

DEVELOPMENT WITH INCLUSIONARY HOUSING ONLY

Unit Type	No Action	With Action MIH Only	Net-difference
Market Rate	550	4,966	4,416
Affordable	0	1,896	1,896
Total Residential Development	550	6,862	6,312

Even when assuming 50% affordability on Site A, the zoning regulations would produce only 1,896 affordable housing units. This is 1,551 fewer affordable housing units than assumed in the DEIS.

Approximately 14% of the neighborhood's population, the group most likely to afford a unit renting at 60% AMI, earned between \$35,000 and \$49,999. This cohort alone is large enough to consume all the affordable housing units.

The DEIS states that in the rezoning and surrounding areas, there are 21,788 unprotected units housing 49,266 low-income residents. As mentioned above, the DEIS does not state the maximum income limits used to determine "low-income." For a conservative analysis, the Comptroller's Office assumed that the DEIS held anything less than \$74,999 was "low income," which allowed the office to calculate the total number of unprotected units by income.

POPULATION OF STUDY AREA MAKING LESS THAN 100% of AMI

Household Incomes	Percent of AMI for Family of 3	Percent of Population	Low Income, Unprotected Units
Less than \$10,000	13%-19%	26%	5562
\$10,000 to \$14,999	19%-32%	12%	2530
\$15,000 to \$24,999	32%-45%	15%	3355
\$25,000 to \$34,999	45%-64%	13%	2941
\$35,000 to \$49,999	64%-97%	17%	3623
\$50,000 to \$74,999	97%-129%	17%	3777
Total		100%	21,788

Source: http://www.nyc.gov/html/dcp/pdf/census/puma_econ_10to12_acs.pdf - bk05

As stated earlier, the Mandatory Inclusionary Housing plan will produce only 1,896 affordable units. This is fewer units than would be at risk in the "45%-64%" AMI band. Therefore, it is possible that some community members in East New York could use those affordable housing units; however, it is too few units for even this income band.

However, lotteries for affordable housing units only have a 50 percent community preference. As a result, it is possible that only 948 units will be available for current neighborhood residents. This will leave 20,840 households in the community at risk of displacement.

Even if the city were able to achieve 3,447 units of affordable housing by working with developers and providing additional subsidy to target deeper levels of affordability, only 1,724 affordable units would be set aside for existing community residents— leaving low-income households living in 20,064 units at risk of displacement.

III. Recommendations: A Path Forward

Zoning is a blunt tool that can lift up neighborhoods and spur appropriate development or cause significant disruption to local communities if not appropriately implemented. Rather than continuing on the current path, the City should rethink its proposal and create a better-defined and targeted plan grounded in three basic principles.

1. Target density to sites primed for affordable housing

The City should abandon its one-size-fits all approach to rezoning and instead create a more targeted plan that upzones, or adds density, on a more limited basis. Specifically, the City should focus on upzoning development sites that have been identified in advance by HPD and developers to ensure that the City can increase the number of units that the community can afford.

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The majority of residents of East New York make less than 40 percent of area median income—a flawed metric that fails to take into account vast differences across the NYC metro area. The City should target the affordable housing income levels to the local community rather than a citywide standard. Under the current plan, 55 percent of residents in East New York and the surrounding communities cannot afford the so-called affordable housing units, which are pegged to citywide AMI thresholds. The City should create a more customized benchmark that more adequately reflects a community's median income levels. There is nothing “affordable” about a housing plan that is beyond the reach of more than half the community.

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