

# Affordable Housing Development After Adoption of New York's City of Yes Zoning

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**In this article, the authors describes the changes to New York City's affordable housing provisions stemming from comprehensive changes to the city's zoning resolution.**

New York City Mayor Eric Adams announced in June 2022 the City of Yes zoning initiative, intended to modernize and update the city's zoning resolution (Zoning Resolution) by promoting environmental sustainability, easing restrictions on small businesses and creating affordable housing. The first two components - Carbon Neutrality and Economic Opportunity - were enacted in December 2023 and June 2024, respectively, without significant controversy. The New York City Council on December 5, 2024, approved the third and final proposal of the zoning initiative, the City of Yes for Housing Opportunity (COY HO).<sup>1</sup>

COY HO is a comprehensive set of changes to the Zoning Resolution designed to stimulate the production of housing generally and particularly affordable housing. These changes include the easing of parking requirements, allowing more density in the form of affordable housing, permitting accessory dwelling units and facilitating conversion of office buildings to residential uses. While the New York City Council modified some of the original proposal,

the enacted text constitutes the broadest and most significant revisions to the Zoning Resolution since the adoption of the 1961 resolution. This article describes the changes to the affordable housing provisions in the Zoning Resolution.

## **VOLUNTARY INCLUSIONARY HOUSING PROGRAM**

Prior to the adoption of COY HO, the Zoning Resolution's principal tool to incentive the production of affordable housing was the Voluntary Inclusionary Housing Program (VIH). VIH was a bonus program under which eligible sites could increase the permitted floor area ratio (FAR)<sup>2</sup> if affordable housing was provided. VIH applied to sites located in R10 districts (and their commercial equivalent), in an Inclusionary Housing Designated Area (IHDA) and in many Special Purpose Districts. All affordable housing under VIH was permanently affordable, and the maximum income for the affordable housing was 80 percent of the Area

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Median Income (AMI), adjusted for household size.<sup>3</sup>

- In R10 districts (and their commercial equivalent), where the base maximum FAR is 10, for each square foot of affordable housing, depending on the building's location and type of work, a building received between 1.25 to 3.5 square feet of bonus floor area up to a maximum FAR of 12.
- In R6 to R9 districts in IHDAs, a building could receive a 33 percent bonus above the base FAR by providing 20 percent of the floor area as affordable housing. For example, a 10,000-square-foot site in an IHDA in an R8 district could construct a 54,000-square-foot residential building with no affordable housing at a maximum base FAR of 5.4.<sup>4</sup> The FAR could be increased to 7.2, allowing 72,000 square feet of floor area if 20 percent of the floor area in the building (or 14,400 square feet) was provided as affordable housing.

Under VIH, the affordable housing could be located in the same building receiving the bonus (referred to as the “compensated development”) or off-site, provided that the off-site building (referred to as the “generating site”) and the compensated development were located in the same community district or in an adjacent community district and within one-half mile of each other. By allowing generating sites to sell their VIH development rights, the city created a very active market for the buying and selling of off-site VIH development rights.

Buildings using VIH were required to distribute the affordable units on at least 65 percent

of the floors, provide a proportionate unit mix for the affordable and market-rate units and meet minimum size specifications. Developers seeking to use VIH needed the approval of the city's Department of Housing Preservation and Development (HPD) and executed a regulatory agreement with HPD.

## **UNIFORM AFFORDABILITY PREFERENCE PROGRAM**

COY HO replaces the VIH Program with a new program known as the Uniform Affordability Preference Program (UAP). In contrast to VIH, which was available only in a relatively limited number of areas, UAP is available in any R6 to R10 district (and commercial equivalents) and in most Special Purpose Districts, except for sites located in Mandatory Inclusionary Housing (MIH) Areas.

UAP is not a bonus program - rather, for each square foot of affordable housing provided, the maximum floor area permitted is increased by an equal amount up to the maximum permitted in that zoning district. For example, a 10,000-square-foot site located in an R8 district now has a base FAR of 7.2<sup>5</sup> when located within 100 feet of a wide street, which can be increased to a maximum FAR of 8.64, provided that all floor area above the maximum base amount (14,400 square feet) is affordable housing. In addition to the floor area increase, buildings providing affordable housing under UAP are permitted to be taller - for example, in an R8 district, for buildings within 100 feet of a wide street, the maximum height is increased from 135 feet to 175 feet.

Affordable housing units under UAP must still be permanently affordable, but the maximum income for all affordable units cannot

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exceed a weighted average of 60 percent of AMI (adjusted for household size). In addition, no more than three income bands are permitted, and the maximum income of any income band is 100 percent AMI (adjusted for household size). Finally, for buildings with 10,000 square feet or more of affordable housing, at least 20 percent of the affordable housing must be affordable to households with incomes not exceeding 40 percent AMI (adjusted for household size).<sup>6</sup>

Most of the other requirements under VIH - such as distribution of affordable units, bedroom mix and unit size - remain the same or similar under UAP. Like for buildings in R10 districts (and their commercial equivalent), IHDA's and certain Special Purpose Districts, UAP also allows the affordable housing to be located off-site within the same geographical limitations as VIH (same community district or in an adjacent community district and within one-half mile). Developers seeking to use UAP will continue to be required to receive approval from HPD.

Table 1 highlights the major components of VIH and UAP.

**Table 1**

	UAP	VIH	
Availability	R6 - R10 (and commercial equivalents)*	R10 (and commercial equivalent), some Special Purpose Districts and IHDA's*	

	UAP	VIH	
Bonus Ratio	One foot increase for each one foot of affordable housing	1.25 - 3.5	
Affordability	Maximum 60 percent AMI average/5 percent at 40 percent AMI/ maximum 100 percent AMI/3 income tiers	80 percent AMI	
Additional Height	Yes	Sometimes	
Available Off-Site	Yes with limitations	Yes with limitations	
Distribution	65 percent of floors	Same	
Bedroom Mix	Proportionate	Same	
Unit Size	For any bedroom type, average size of affordable must be equal to average size of market or meet minimum size	Minimum size requirements apply	

\* Not available in MIH Areas

The broader availability of UAP will provide increased opportunities for the development of affordable housing in areas of the city where it has not been previously permitted. However, the requirement that 100 percent of the additional floor area be affordable housing could lead developers to elect to build 100 percent market-rate and forgo the additional floor area.

## **AFFORDABLE HOUSING OPTIONS POST-COY HO**

Despite the adoption of UAP, the VIH Program will continue to be available in many areas due to the inclusion of grandfathering provisions that allows developers to utilize the bonuses available under VIH.

- Developers with buildings in R10 districts (and their commercial equivalent), IHDAs and many Special Purpose Districts are allowed to purchase VIH development rights at the same bonus ratio (1.25 to 3.5 for R10 districts and 1.25 for IHDAs) as existed prior to the adoption of COY HO.
- Any generating site that has a regulatory agreement with HPD as of Dec. 5, 2024, retains the right to sell the inclusionary housing development rights using the VIH bonus ratios.
- Generating sites for new construction where an application is pending with the city's Department of Buildings (DOB) as of Dec. 5, 2024, are also grandfathered and able to sell their VIH development rights using the VIH bonus ratios if 1) DOB approves an application for a foundation, new building or alteration permit within one year of adoption and 2) HPD

signs a regulatory agreement within two years of adoption.<sup>7</sup>

- Buildings utilizing VIH development rights receive the same additional height and increased FAR as a building developed under UAP.

Returning to the R8 site example, assuming the 10,000-square-foot site is located in an IHDA, the floor area can be increased from 72,000 square feet at a maximum base FAR of 7.2 to 86,400 square feet at a maximum FAR of 8.64 by either providing 14,400 square feet of affordable housing under UAP or 11,520 square feet by purchasing VIH development rights (14,400/1.25).

For a 10,000-square-foot site located in an R10 district where the ratio is 3.5:1, only 5,715 square feet of VIH development rights are needed, compared to 20,000 square feet under UAP. In addition, the buildings qualify for the additional height, regardless of whether they use UAP or purchase VIH development rights.

VIH will be most advantageous to condominium developers who are not eligible for the Affordable Neighborhoods for New Yorkers Program (also known as 485-x) and prefer not to have affordable housing in their buildings. Rental developers who need to use 485-x are required under that program to provide 20 percent to 25 percent of the units as affordable in the building and will have no incentive to purchase VIH development rights. For that reason, rental developers will likely be the major users of UAP.

## **IN SUMMARY**

- The New York City Council on December

5, 2024, approved the third and final proposal of Mayor Eric Adams' City of Yes zoning initiative, the City of Yes for Housing Opportunity (COY HO). COY HO is a comprehensive set of changes to the Zoning Resolution designed to stimulate the production of housing generally - and particularly affordable housing. These changes include the easing of parking requirements, allowing more density, permitting accessory dwelling units and facilitating conversion of office buildings to residential uses.

- Through its new UAP, COY HO seeks to incentivize increased development of housing throughout the majority of the city where affordable housing programs have not previously been applied under the Zoning Resolution. However, the requirement that 100 percent of the additional floor area that is permitted under UAP be provided as affordable housing could lead developers to elect to build 100 percent market-rate and forgo the increase in floor area permitted under UAP.
- The old VIH will continue to be available in many areas due to the inclusion of grandfathering provisions allowing developers to utilize the bonuses available under VIH.
- VIH will be most valuable to condominium developers who are not eligible for

the Affordable Neighborhoods for New Yorkers Program (also known as 485-x) and prefer not to have affordable housing in their buildings. Rental developers who need to use 485-x are required under that program to provide 20 percent to 25 percent of the units as affordable in the building and will have no incentive to purchase VIH development rights. For that reason, rental developers will be the most likely to utilize UAP.

### NOTES:

<sup>1</sup> <https://www.nyc.gov/site/planning/plans/city-of-yes/city-of-yes-overview.page>.

<sup>2</sup>Floor area ratio (FAR) is the ratio of total building floor area to the area of its zoning lot.

<sup>3</sup>There was and continues to be a separate program known as Mandatory Inclusionary Housing (MIH). For sites located in a MIH Area listed in Appendix F, no residential development is permitted unless it includes a minimum amount of affordable housing (ranging from 20 percent to 30 percent of floor area). This program is unchanged and for that reason is not discussed in this article.

<sup>4</sup>In most Inclusionary Housing Designated Areas (IHDAs), the base FAR was lower than comparable districts not in IHDAs. For example, in non-IHDAs in R8 districts, the maximum FAR was 6.02, allowing a maximum floor area of 62,000 square feet.

<sup>5</sup>Compared to 5.4 in an IHDA or 6.02 in a non-IHDA that previously applied.

<sup>6</sup>Using the example from the previous paragraph, 2,400 square feet of the 12,000 square feet of affordable housing must be occupied by households with a maximum income of 40 percent Area Median Income (AMI) (as adjusted for household size).

<sup>7</sup>Generating sites that are preserving existing affordable housing have one year to sign the regulatory agreement with the city's Department of Housing Preservation and Development (HPD).