



ZONING DIVISION

Carl Weisbrod, *Director*  
Department of City Planning

September 25, 2015

**Re: N 160051 ZRY**  
Mandatory Inclusionary Housing Text Amendment

Dear New Yorker:

On September 21, 2015, the City Planning Commission (CPC) referred out the Mandatory Inclusionary Housing Text Amendment (N 160051 ZRY), beginning the public review process. The proposed zoning text amendment would require that a share of new housing be permanently affordable; however, this program would only become applicable through subsequent City zoning actions.

Please refer to the attached application for a more detailed description of the proposed amendment. Additional information on the proposal, as well as digital copies of the proposed zoning text are available on the Department of City Planning's website.

The application for the zoning text amendment (N 160051 ZRY) is subject to your review. If you have any comments or recommendations on this application, please send them by **November 30, 2015** to:

City Planning Commission  
Calendar Information Office  
22 Reade Street, Room 2E  
New York, N.Y. 10007

If you have any questions on the proposed text amendment, please contact the Affordable Housing team of the Department of City Planning at [AHOUSING@planning.nyc.gov](mailto:AHOUSING@planning.nyc.gov), or Jennifer Gravel, Division of Housing, Economic and Infrastructure Planning, at 212-720-3282.

Sincerely,

Beth Lebowitz

Beth Lebowitz, *Director*  
Frank Ruchala Jr., *Deputy Director*  
Jean Davis, *Office Administrator*  
22 Reade Street, New York, NY 10007-1216 Room 3E  
Tel (212) 720-3325 - Fax (212) 720-3244

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**ENCLOSURE**

**C:     Jacquelyn Harris, DCP  
        James Merani, DCP  
        All Borough Presidents  
        All Community Boards  
        Department of Buildings  
        Board of Standards and Appeals  
        City Council**



Latha Thompson &lt;thompson@cb8m.com&gt;

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**N 160051 ZRY Mandatory Inclusionary Housing Text Amendment**2 messages

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**Beth Lebowitz (DCP)** <BLEBOWI@planning.nyc.gov>

Mon, Sep 28, 2015 at 12:08 PM

To: "Affordable Housing Text (DCP)" &lt;AHOUSING@planning.nyc.gov&gt;

Cc: "Danielle J. DeCerbo (DCP)" &lt;DDECERBO@planning.nyc.gov&gt;, "Jacquelyn Harris (DCP)"

&lt;JHARRIS@planning.nyc.gov&gt;, "Jennifer Gravel (DCP)" &lt;JGRAVEL@planning.nyc.gov&gt;

September 28, 2015

**Re: N 160051 ZRY**

Mandatory Inclusionary Housing Text Amendment

Dear New Yorker:

On September 21, 2015, the City Planning Commission (CPC) referred out the Mandatory Inclusionary Housing Text Amendment (N 160051 ZRY), beginning the public review process. The proposed zoning text amendment would require that a share of new housing be permanently affordable; however, this program would only become applicable through subsequent City zoning actions.

The referral package containing the referral letter, the printed application, the proposed text amendment, and a detailed description of the proposal was mailed to each community board on Friday, September 25<sup>th</sup>, 2015. For your convenience, we have attached a digital copy.

Please refer to the attached application for a more detailed description of the proposed amendment. Additional information on the proposal, as well as a digital copy of the proposed zoning text are available on the Department of City Planning's website.

The application for the zoning text amendment (N 160051 ZRY) is subject to your review. If you have any comments or recommendations on this application, please send them by **November 30, 2015** to:

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Sincerely,

Beth Lebowitz

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Beth Lebowitz

Director, Zoning Division

NYC Department of City Planning

22 Reade Street - 3E, New York, NY 10007

t 212-720-3263, f 212-720-3244

blebowi@planning.nyc.gov



Mandatory Inclusionary HousingTxt Amendment (1).docx  
276K

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Latha Thompson <thompson@cb8m.com>

Mon, Sep 28, 2015 at 12:15 PM

To: "Elaine M. Walsh" <elaine.walsh67@gmail.com>, Elizabeth Ashby <e.ashby96@gmail.com>, Edward Hartzog <ehartzog@nyc.rr.com>

Latha Thompson

District Manager

Community Board 8M

Phone: 212-758-4340

Fax: 212-758-4616

Email: thompson@cb8m.com

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Mandatory Inclusionary HousingTxt Amendment (1).docx  
276K



# Land Use Review Application

Department of City Planning

22 Reade Street, New York, NY 10007-1216

N160051 ZRY

City Planning will  
assign and stamp  
reference numbers  
here

## 1. APPLICANT AND APPLICANT'S REPRESENTATIVES

APPLICATION NUMBER

APPLICATION NUMBER

APPLICATION NUMBER

APPLICATION NUMBER

N Y C D C P

B e t h L e b o w i t z

APPLICANT (COMPANY/AGENCY OR OTHER ORGANIZATION) \*

APPLICANT'S PRIMARY REPRESENTATIVE

22 Reade Street

N Y C D C F

STREET ADDRESS

REPRESENTATIVE'S COMPANY/AGENCY OR OTHER ORGANIZATION

New York N Y 10003

STREET ADDRESS

CITY STATE ZIP

CITY STATE ZIP

212-720-3262

AREA CODE TELEPHONE # FAX #

AREA CODE TELEPHONE # FAX #

\* List additional applicants below:

CO-APPLICANT (COMPANY/AGENCY OR OTHER ORGANIZATION)

CO-APPLICANT (COMPANY/AGENCY OR OTHER ORGANIZATION)  
ADDITIONAL APPLICANT REPRESENTATIVE:

NAME AND PROFESSIONAL AFFILIATION (ATTORNEY/ARCHITECT/ENGINEER ETC.)

TELEPHONE # FAX #

C i t y w i d e

Mandatory Inclusionary Housing  
PROJECT NAME (IF ANY)

STREET ADDRESS

N  
DESCRIPTION OF PROPERTY BY BOUNDING STREETS OR CROSS STREETS

EXISTING ZONING DISTRICT (INCLUDING SPECIAL ZONING DISTRICT DESIGNATION, IF ANY)

ZONING SECTIONAL MAP NO(S).

TAX BLOCK AND LOT NUMBER

BOROUGH

COMM. DIST.

URBAN RENEWAL AREA, HISTORIC DISTRICT OR OTHER DESIGNATED AREA (IF ANY)

IS SITE A NEW YORK CITY OR OTHER LANDMARK? NO ☐ YES ☐ IF YES, IDENTIFY

## 3. DESCRIPTION OF PROPOSAL

(If the entire project description does not fit in this space, enter "see attached description" below and submit description on a separate sheet, identified as "LR Item 3. Description of Proposal")

## 4. ACTIONS REQUESTED AND FEES

(Check appropriate action(s) and attach supplemental form)

\* No  
supplemental  
form required

- ☐ CHANGE IN CITY MAP.....MM \$
- ☐ ZONING MAP AMENDMENT.....ZM \$
- ☒ ZONING TEXT AMENDMENT.....ZR \$ 0
- ☐ ZONING SPECIAL PERMIT.....ZS \$
- ☐ ZONING AUTHORIZATION.....ZA \$
- ☐ ZONING CERTIFICATION.....ZC \$
- ☐ PUBLIC FACILITY, SEL./ACQ.....PF \$
- ☐ DISPOSITION OF REAL PROP.....PP \$
- ☐ URBAN DEVELOP-T ACTION.....HA \$
- ☐ URBAN RENEWAL PROJECT..... \$
- ☐ HOUSING PLAN & PROJECT..... \$
- ☐ FRANCHISE..... \$
- ☐ REVOCABLE CONSENT..... \$
- ☐ CONCESSION..... \$
- ☐ LANDFILL..... \$
- ☐ OTHER (Describe)..... \$

- ☐ MODIFICATION \$
- ☐ FOLLOW-UP \$
- ☐ RENEWAL \$
- ☐ OTHER \$
- TOTAL FEE (For all actions) \$

Make Check or Money Order payable to Department of City Planning.  
If fee exemption is claimed check box below and explain

☒ C i t y A g e n c y

Has pre-application meeting been held? ☐ NO ☐ YES

If yes N / A  
DCP Office/Representative Date of meeting

NY PLANNING COMMISSION

**5. ENVIRONMENTAL REVIEW**

CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) (Discuss with CEQR lead agency before completing)

LEAD AGENCY N Y C D C PCEQR NUMBER 1 6 D C P 0 2 8 Y

TYPE OF CEQR ACTION:

☐ TYPE II Type II category: \_\_\_\_\_

Date determination was made: \_\_\_\_\_

☒ TYPE I } Has EAS been filed? Yes ☒No ☐☐ UNLISTED } If yes, Date EAS filed: September 19, 2015No ☐Has CEQR determination been made? Yes ☒If yes, what was determination? Negative Declaration ☒CND ☐Positive Declaration ☐Date determination made: 9 / 18 / 2 0 1 5 (Attach Copy)

If Positive Declaration, has PDEIS been filed? \_\_\_\_\_

Has Notice of Completion (NOC) for DEIS been issued? \_\_\_\_\_

If yes, attach copy.

If PDEIS has not been filed, has final scope been issued? \_\_\_\_\_

If yes, date issued: \_\_\_\_\_

**6. COASTAL ZONE MANAGEMENT**IS SITE IN STATE DESIGNATED COASTAL ZONE MANAGEMENT (CZM)? AREA? No ☐ Yes ☒**7. RELATED ACTIONS BY CITY PLANNING**

LIST ALL CURRENT OR PRIOR CITY PLANNING COMMISSION ACTIONS RELATED TO SITE:

APPLICATION NO. DESCRIPTION/ DISPOSITION/STATUS CAL. NO. DATE

**8. RELATED ACTIONS BY OTHER AGENCIES**

LIST ALL OTHER CURRENT OR PRIOR CITY, STATE OR FEDERAL ACTIONS RELATED TO APPLICATION:

REFERENCE NO. DESCRIPTION/ DISPOSITION/STATUS CAL. NO. DATE

**9. FUTURE ACTIONS REQUIRED**

LIST ALL FUTURE CITY, STATE OR FEDERAL ACTIONS REQUIRED TO IMPLEMENT THE PROPOSED ACTION:

**10. APPLICANT**  
(Attach authorizing resolution(s), if applicable)Beth Labowitz, Director, Zoning Division, NYCDCP  
NAME AND TITLE OF APPLICANT OR AUTHORIZED REPRESENTATIVEBeth Labowitz  
SIGNATURE OF APPLICANT9/17/2015  
DATEN Y C D C P  
APPLICANT'S COMPANY/AGENCY OR OTHER ORGANIZATION (IF ANY)**11. CO-APPLICANTS**

NAME AND TITLE OF CO-APPLICANT OR AUTHORIZED REPRESENTATIVE

SIGNATURE OF CO-APPLICANT DATE

(Attach authorizing resolution(s), if applicable)

CO-APPLICANT'S COMPANY/AGENCY OR OTHER ORGANIZATION

STREET ADDRESS CITY STATE ZIP TEL. NO. FAX

NAME AND TITLE OF CO-APPLICANT OR AUTHORIZED REPRESENTATIVE

SIGNATURE OF CO-APPLICANT DATE

CO-APPLICANT'S COMPANY/AGENCY OR OTHER ORGANIZATION

STREET ADDRESS CITY STATE ZIP TEL. NO. FAX

**ADMINISTRATIVE CODE**

ANY PERSON WHO SHALL KNOWINGLY MAKE A FALSE REPRESENTATION ON OR WHO SHALL KNOWINGLY FALSIFY OR CAUSE TO BE FALSIFIED ANY FORM, MAP, REPORT OR OTHER DOCUMENT SUBMITTED IN CONNECTION WITH THIS APPLICATION SHALL BE GUILTY OF AN OFFENSE PUNISHABLE BY FINE OR IMPRISONMENT OR BOTH, PURSUANT TO SECTION 10-154 OF THE CITY OF NEW YORK ADMINISTRATIVE CODE.

**NOTICE**

THIS APPLICATION WILL BE DEEMED PRELIMINARY UNTIL IT IS CERTIFIED AS COMPLETE BY THE DEPARTMENT OF CITY PLANNING OR THE CITY PLANNING COMMISSION. ADDITIONAL INFORMATION MAY BE REQUESTED OF THE APPLICANT BY THE DEPARTMENT OF CITY PLANNING.

CITY PLANNING COMMISSION  
2015 SEP 18 AM 11:31  
DEPT OF CITY PLANNING

NT60051 ZRY

# City Map Change . . . . . MM

## Proposed City Map Change (Check appropriate boxes)

- APPLICATION NO. \_\_\_\_\_
1. ESTABLISH NEW.....☐ STREET ☐ PARK ☐ PUBLIC PLACE ☐ GRADE
  2. ELIMINATE EXISTING.....☐ STREET ☐ PARK ☐ PUBLIC PLACE ☐ GRADE
  3. CHANGE EXISTING STREET.....☐ WIDTH ☐ ALIGNMENT ☐ GRADE
  4. EASEMENT  
Delineate New.....☐ Remove Existing.....☐ Modify Existing.....☐
  5. RELATED ACQUISITION OR DISPOSITION OF PROPERTY .....☐

# Zoning Map Change . . . . . ZM

## Proposed Zoning Map Change(s)

APPLICATION NO. \_\_\_\_\_

(If more than five changes are being requested, enter "see attached" below and list ALL PROPOSED ZONING CHANGES in the same format as below on a separate sheet titled "Proposed Zoning Map Changes")

CHANGE #1	FROM: _____	TO: _____
	EXISTING	PROPOSED
CHANGE #2	FROM: _____	TO: _____
	EXISTING	PROPOSED
CHANGE #3	FROM: _____	TO: _____
	EXISTING	PROPOSED
CHANGE #4	FROM: _____	TO: _____
	EXISTING	PROPOSED
CHANGE #5	FROM: _____	TO: _____
	EXISTING	PROPOSED

# Zoning Text Amendment . . . . . ZR

**NT60051 ZRY**

## Affected Zoning Resolution (ZR) Sections

ZR SECTION NUMBER ZONING RESOLUTION SECTION TITLE

See Attached

DEPT OF CITY PLANNING

2015 SEP 18 AM 11:31

CITY PLANNING COMM. STOR





## PROPOSED ZONING TEXT AMENDMENTS

Affected Zoning Resolution Sections	<u>ZR SECTION</u>	<u>ZONING RESOLUTION SECTION TITLE</u>
	<u>NUMBER</u>	
	12-10	Definitions
	23-10	Open Space and Floor Area Ratios
	23-90	Inclusionary Housing
	62-80	Special Review Provisions
	73-62	Modifications of Bulk Regulations for Buildings Containing Residences
	74-00	Powers of the City Planning Commission
	74-30	Special Permits Uses and Bulk Modifications

## **LR ITEM 3 – DESCRIPTION OF THE PROPOSAL**

### **MANDATORY INCLUSIONARY HOUSING TEXT AMENDMENT**

#### **Background**

Even with substantial rates of new housing creation, growth in population and employment in New York City has placed increased demands on the city's housing supply, exacerbating already high housing costs. Moreover, rents have risen faster than incomes and the share of New Yorkers who qualify as "rent burdened"<sup>1</sup> now constitutes almost 55 percent of all renter households, an increase of 11 percent since 2000.

An analysis in *Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods*, the Department of City Planning's report on the proposed Mandatory Inclusionary Housing program ("MIH"), showed that many of the city's more affluent areas, which frequently offer greater opportunity in terms of access to quality services, education and employment opportunities, have had a net loss of low- and moderate-income households, indicating that there has been a decline in the amount of housing accessible to low- and moderate-income households in these areas. A consequence of recent housing market, employment and demographic trends is that many of the city's neighborhoods are becoming less economically diverse.

Under Mayor de Blasio's *Housing New York* plan, the City plans to spend over \$8.2 billion, with a total investment of over \$41 billion from public and private sources, to create and preserve 200,000 units of affordable housing over 10 years. While previous affordable housing efforts tended to produce most units affordable in a narrow range focused at 60 percent of Area Median Income, the plan includes new initiatives to create more affordable units at lower income levels, as well as at moderate incomes, and to provide more affordable housing for seniors. One key initiative of *Housing New York* is the establishment of an MIH program, which would require a share of new housing to be permanently affordable in areas that are rezoned to support new housing production. Under that program, affordable housing would be required, not optional, when developers build in a newly rezoned area – whether rezoned as part of a city neighborhood plan or a private rezoning application.

The purpose of the proposed MIH program is to promote neighborhood economic diversity in locations where land use actions create substantial new housing opportunities. New requirements for affordable housing under the proposed MIH program are only one part of a comprehensive approach to addressing the affordability crisis and implementing *Housing New York's* goals. Several other initiatives will complement MIH to address the city's affordable housing needs and promote neighborhood economic diversity, including the Zoning for Quality and Affordability (ZQA) zoning text amendments; DCP's neighborhood studies; and reform of the City's 421-a real estate tax exemption program. More detailed descriptions of these initiatives follows.

#### **Related Initiatives**

##### ***Zoning for Quality and Affordability ("ZQA") Text Amendment***

Since the release of *Housing New York*, DCP – working with HPD, communities, nonprofit housing groups, architects, developers and other practitioners – has identified zoning barriers that constrain new housing creation, particularly affordable housing, and add unnecessary costs. Strategies to address many of these zoning barriers are addressed in DCP's proposed Zoning for Quality and Affordability ("ZQA") text amendment, which will undergo a separate but concurrent review to the MIH text amendment. These changes would improve the efficiency of subsidy and reduce construction costs for affordable housing, increasing affordable housing production within the existing voluntary program as well as the proposed MIH program.

## *Neighborhood Studies*

DCP, in partnership with communities and other City agencies, is conducting neighborhood planning studies to foster diverse, livable neighborhoods with mixed-income housing and supporting services. It is the intention of DCP to include an MIH program as part of those plans. The Department and its partners have thus far launched six neighborhood studies: East New York in Brooklyn; Jerome Avenue in the Bronx; Flushing West and the Long Island City Core in Queens; the Bay Street Corridor in Staten Island; and East Harlem in Manhattan. The East New York rezoning will be the first to include a mapping of an MIH area as part of the land use action.

### **421-a**

Most new multifamily housing built in recent decades has been eligible for a property tax exemption under the City's 421-a program. State legislation approved in June 2015 included key changes to increase the production, cost-effectiveness and range of incomes served by the 421-a program. The MIH program was designed to complement the framework of the recently enacted 421-a program to ensure permanence and neighborhood economic diversity.

### **Project Description**

The proposed text amendment would require permanently affordable housing set-asides for all developments over 10 units or 12,500 zoning square feet within MIH areas or, as an additional option for developments between 10 and 25 units, or 12,500 to 25,000 square feet, a payment into an affordable housing fund. A citywide zoning text amendment to authorize an MIH program is necessary to implement the proposal, which would require permanently affordable housing within new residential developments, enlargements, and conversions from non-residential to residential use within subsequently mapped MIH areas. In cases of hardship, where these requirements would make development financially infeasible, developers may apply to the Board of Standards and Appeals ("BSA") for a special permit to reduce or modify the requirements. Developments, enlargements or conversions that do not exceed either 10 units or 12,500 square feet of residential floor area would be exempt from the requirements of the program.

The proposed MIH program would not affect existing provisions in the Zoning Resolution ("ZR") that apply to the regulation and administration of the Inclusionary Housing Program within existing Inclusionary Housing Designated Areas ("IHDA") or R10 or R10 equivalent districts ("R10 Program") – also collectively referred to in this document as Voluntary Inclusionary Housing ("VIH"). Any changes to the VIH program would occur at a later date and would be the subject of separate review and analysis.

### **Applicability**

The text amendment would have no effect until mapped through subsequent discretionary actions of the City Planning Commission ("CPC"). These actions include zoning map and zoning text amendments, each of which would be subject to a public review process and separate environmental review. As with zoning actions generally, MIH areas may be mapped through DCP-initiated actions or as part of private applications.

The MIH program would apply to developments, enlargements or conversions on zoning lots within mapped MIH areas. Since floor area bonuses for affordable would not apply in the MIH program, as they do in the VIH program, alternate definitions are proposed in ZR Section 23-91 for zoning lots and developments affected by MIH. Affordable or supportive housing developments that meet the requirements of the MIH program are called "MIH sites," while developments that generate the MIH requirements are called "MIH developments." A zoning lot with an MIH development is called an "MIH zoning lot."

The first mapping of an MIH area would occur as part of the proposed zoning map and text

amendments (“East New York rezoning proposal”) that would affect a total of approximately 190 blocks in East New York and Ocean Hill to facilitate implementation of the East New York Community Plan. That rezoning proposal is the subject of a separate but concurrent land use and environmental review process to the citywide MIH zoning text amendment.

Additionally, MIH would be applied as part of future neighborhood rezonings and private applications that facilitate the development of a substantial amount of new housing. In both instances, MIH would be applied where such action serves the program’s objectives to promote neighborhood economic diversity and to encourage housing production at a range of income levels. The program would be applied consistently and programmatically in a way that supports broader housing and land use objectives and the feasibility of private development.

The MIH program is anticipated to be applied in areas outside of MIH areas as a condition of the granting of future special permits for use or bulk modifications that facilitate the creation of a significant number of additional dwelling units. The CPC could reduce, modify or waive the MIH requirements for such special permits where it finds that the project would facilitate significant investments in public infrastructure or public facilities that address broader community needs that are not generated by the proposed development. The requirements could also be modified for special permits that enable a site to receive transferred development rights pursuant to the Hudson River Park Act.

#### **Affordability Requirements**

The proposed MIH program includes two primary options that pair set-aside percentages with different affordability levels to reach a range of low and moderate incomes while accounting for the financial feasibility tradeoff inherent between income levels and size of the affordable set-aside. When MIH is applied, the applicant, CPC and City Council would choose one or more of the two primary options based on a consideration of area housing conditions, needs and income levels within and near the area covered by the proposal.

The proposed options are as follows:

**Option One:** At least 25 percent of the residential floor area shall be provided as housing affordable to households at an average of 60 percent of the Area Median Income index (“AMI”), with no unit targeted at a level exceeding 130 percent of AMI.

**Option Two:** At least 30 percent of the residential floor area shall be provided as housing affordable to households at an average of 80 percent of the Income Index (“AMI”), with no unit targeted at a level exceeding 130 percent of AMI.

In addition, in areas where market conditions are anticipated to support new construction, but not the feasibility of reaching low-income levels without the use of subsidy, and where the creation of moderate-income housing would contribute to neighborhood economic diversity, the applicant, CPC and City Council may choose to apply a “workforce option,” described below, in addition to options one and two.

**Workforce Option:** This option would require that at least 30 percent of the residential floor area shall be provided as housing affordable to households at an average of 120 percent AMI, with no single qualifying household with income exceeding 130 percent of AMI, and with no public funding as defined in ZR 23-90, except where HPD determines that public funding is necessary to support other affordable housing within the development beyond the applicable set-aside. This option would not apply in Manhattan Core, which encompasses Community Districts 1 through 8. The workforce option is appropriate in “emerging” or “mid-market” areas where the skew of higher and lower rents contemplated in options one and two is not

supported by local market conditions.

#### **Location**

**Same building.** In all instances, MIH affordable units may be located in the same building as market-rate units incurring the affordability obligation under the MIH program. The affordable units must share a common primary entrance with the market-rate units and must be distributed on at least 50 percent of the building's floors. These distribution requirements would not apply to MIH sites containing supportive housing or affordable senior housing because the programmatic requirements of such facilities may be supported by the clustering of units. The distribution requirements would not apply when all market-rate units in the building are condominiums and the affordable units are rentals. These requirements may also be waived for affordable floor area created in an MIH site through enlargement because the distribution of affordable units may be impracticable due to existing building configurations and occupancy. As in the VIH program, HPD may also waive the distribution requirements for any new construction affordable housing that cannot comply with the requirements of Federal, State or City programs because of the distribution requirements.

**Same zoning lot.** Affordable units may be located in a separate building on the same zoning lot that contains a market-rate building incurring the affordability obligation under the MIH program, provided that the buildings are independent from the street grade to the sky. Affordable and market-rate buildings that do not share a common entrance must have their primary entrances on a common street frontage, and many only front on a different street if HPD determines that an alternative configuration does not stigmatize occupants of the affordable housing.

**Separate zoning lot.** As with the City's VIH program, affordable units may also be located on a separate zoning lot within the same community district or within a half-mile of the market-rate development incurring the affordability obligation under the MIH program. (Notably, market-rate developments where MIH units are provided on a separate zoning lot would not be eligible for the 421-a tax abatement.)

#### **Method of Calculating Floor Area**

The MIH text would permit HPD, through its guidelines,<sup>4</sup> to specify a method for calculating affordable floor area and the size of affordable units on MIH sites that is consistent with the standard procedure methodologies used by the New York City Department of Buildings ("DOB") for calculating floor area. This method is more straightforward than the method described in the current VIH program, which requires floor area to be measured from within the perimeter walls of a building or unit. The method described in the current VIH program is inconsistent with standard DOB procedure and creates unnecessary additional work that adds to the process costs faced by developers of affordable housing.

#### **Bedroom Mix**

The bedroom mix for an MIH site would be the same as is currently required for affordable housing that generates bonus floor area under the VIH program (currently defined in the ZR as a "generating site". Under these requirements, the bedroom mix must match the market-rate units or be at least 50 percent two-bedroom or more and 75 percent one-bedroom or more. However, the bedroom mix would not apply to affordable senior housing to allow senior housing to meet the needs of its target population.

#### **Unit Size**

The size of affordable units developed under the MIH program would be consistent with the minimum unit sizes currently set forth in the ZR for the VIH program, except that where market-rate units have an average smaller size than the specified minimum size for a dwelling unit with a particular bedroom count, the smaller average size may apply. These sizes are:

- 400 square feet of floor area for a zero-bedroom unit; or
- 575 square feet of floor area for a one-bedroom unit; or
- 775 square feet of floor area for a two-bedroom unit; or
- 950 square feet of floor area for a three-bedroom unit.

#### **Payment in Lieu Option**

In recognition that the creation, administration and oversight of small numbers of units poses a challenge for developers, administering agents and the City, a payment in lieu option would be available on a limited basis to small developments to ensure that smaller projects can proceed while supporting the objectives of the MIH program.

The fee-in-lieu option would be available for developments that do not exceed 25 units or 25,000 zoning square feet of residential development. The fee would be based on the cost of providing a permanently affordable unit in the vicinity of the MIH development and would be established through HPD's guidelines<sup>1</sup>.

Any funds collected could be used for a range of housing affordability measures, including new construction, rehabilitation, preservation and other affordable housing purposes set forth by HPD in its guidelines. Consistent with the geographic nexus of the MIH program, the funds would be made available for use within the same Community District or within a half-mile radius of the development generating the funds. If the payment cannot be spent within a number of years as set forth in HPD's guidelines, the funds may be made available for use over a wider geography. This ensures that the funds will be used for purposes consistent with the objectives of the MIH program.

#### **BSA Special Permit**

The program would establish a special permit by which the BSA may reduce the amount of affordable floor area required or modify affordability requirements for developments made infeasible by the requirements of MIH. The program is designed such that reductions and waivers would only be necessary in exceptional circumstances and would only be available where the requirements of MIH, rather than other factors, are the source of the hardship. The recourse enabled by this provision also ensures that the MIH program would not adversely affect housing creation in the event of unforeseen economic shifts.

#### **Additional Program Provisions**

**Homeownership option.** Developments may satisfy affordability obligations with a homeownership option. The MIH homeownership option would be substantially similar to that currently available through the VIH program, except that the method for establishing the eligible initial price that can be charged for a homeownership affordable unit based on the income level required under the zoning will be established in HPD's guidelines.

**No preservation option.** The current program permits property owners that use bonus floor area for a "compensated development" to fulfill VIH affordable housing obligations through the permanent renewal of affordability requirements in buildings where existing regulatory agreements that limit rents may expire. This option would not be available to MIH developments.

**Supportive housing.** Supportive housing units that fulfill the affordable housing requirements under the VIH program must be located in a separate building from the market rate units. This

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<sup>1</sup> The "guidelines" set forth additional requirements in addition to those outlined in the ZR for sites that provide affordable housing under either the VIH or proposed MIH programs, pursuant to ZR Section 23-96. The guidelines are established through a separate rule-making process at HPD pursuant to the City Administrative Procedures Act (CAPA).

restriction would not apply in the MIH program, allowing for supportive housing to be located in mixed-income buildings.

**Grandfathered tenants.** An occupant of an affordable housing unit may include a tenant of a building on an MIH site that has been demolished for construction of an MIH development, even if the tenant's household income exceeds the income qualifications for the new affordable unit.

**Simplified regulatory agreements for MIH sites.** The current Inclusionary Housing program requires a regulatory agreement between HPD and the owner of a generating site that outlines compliance with all of the provisions of the program. The regulatory agreement must be approved by HPD and closing on all financing must occur before a DOB permits can be issued for a compensated development.<sup>2</sup>

A streamlined process for administration of the MIH program would be necessary given its broad applicability. Therefore, although a regulatory agreement would still be required for MIH sites, it would have modified requirements to allow for greater predictability and efficiency in the administration of requirements for MIH sites. In lieu of the affordable housing plan currently required of VIH sites, the regulatory agreement would contain an MIH application, a standardized form that would be required for all MIH sites that would specify compliance with the MIH guidelines. The MIH application would require information about asking rents for affordable units; building plans; zoning calculations showing affordable floor area; and unit size, distribution and bedroom mix of the affordable units. These requirements could be modified in HPD's guidelines.

A restrictive declaration that includes the MIH application must be recorded against the MIH development and site outlining compliance with the MIH program, but unlike the VIH program, bank closing and HPD approval of an MIH application would not be required prior to issuance of a permit notice.

The MIH application would, like the affordable housing plan in VIH, designate an administering agent to monitor compliance of the rental of the affordable units; and require sufficient reserves for the maintenance, operation and administration of the affordable units. A copy of the application must be delivered to the applicable community board concurrent with submission to HPD.

**Administering agents.** The MIH program would allow HPD to establish a list of pre-qualified administering agents who may monitor MIH units for compliance with the regulatory agreement. Alternatively, where appropriate, HPD may monitor MIH units in lieu of an administering agent, as stipulated in their administrative guidelines.

**HPD guidelines.** The Inclusionary Housing program is administered by HPD pursuant to guidelines that set forth requirements in addition to those established through zoning. The current guidelines are found in the Rules of the City of New York, Title 28, Chapter 41. The guidelines are established through a separate rule-making process at HPD pursuant to the City Administrative Procedures Act (CAPA). The administration of a new MIH program, which would differ from the existing VIH program in its structure and in the range of participating developers, requires sufficient flexibility for HPD to modify certain administrative aspects of the program based on the experience of implementing the program. While the essential structure and requirements of the MIH program would be established in the zoning text itself, the text would authorize HPD to establish through the guidelines provisions including:

*Provisions regarding the reservation period and use of the "Affordable Housing Fund."* Any funds collected could be used for a range of housing affordability measures, including new

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<sup>2</sup> A "generating site" and a "compensated development" are defined in ZR Section 23-91. A generating is an affordable or supportive housing development that meets the requirements of the VIH program and can be used to generate bonus floor area for compensated developments within IHDA or R10 Districts.

construction, rehabilitation, preservation and other affordable housing purposes set forth in HPD's guidelines. Consistent with the geographic nexus of the MIH program, the funds would be made available for use within the same Community District or within a half-mile radius of the development generating the funds. If the payment cannot be spent within a number of years as set forth in HPD's guidelines, the funds would become available for use over a wider geography. This ensures that the funds could be used for purposes consistent with the objectives of the MIH program.

*Changes to the distribution requirements allowed when there are not enough units to meet the standards described in zoning.* In unusual instances, such as where buildings are small or unusually configured, it may not be possible for a developer to meet the distribution requirements in the ZR. In such instances, the guidelines would specify how the distribution requirements would be administered.

*Method of measuring the floor area of affordable housing units.* In the VIH program, the ZR specifies a specific method of measuring the floor area of affordable units that differs from standard DOB methodology. These requirements have been both unnecessary to administering the program and cumbersome to affordable housing developers who must submit additional floor area calculations to demonstrate compliance with the requirements. The zoning text would exempt affordable units in MIH site from these requirements and allow HPD specify the method through the guidelines that is consistent with standard DOB practices. This would remove an unnecessary burden faced by affordable housing developers.

*Requirements for qualifying "administering agents".* The Inclusionary Housing program requires a designated administering agent for affordable housing that is responsible for ensuring that units are rented to qualifying households pursuant to the terms of the regulatory agreement. In the VIH program, the administering agent must be a not-for-profit and may not be the owner or managing agent of the site that is generating the affordable requirement. The MIH program also grants a public entity the ability to monitor affordable units in lieu of an administering agent, pursuant to their guidelines. More flexibility in the requirements for eligible administering agents may be necessary for MIH given its broader applicability.

*Provisions regarding how to set the initial price for homeownership units.* The ZR describes a specific method that HPD must use to establish the initial price of a homeownership affordable unit. The proposed zoning text provides for additional flexibility to be specified in the guidelines for MIH homeownership units, to account for the broader range of incomes that are served under the MIH options.

*Additional requirements for rental affordable housing.* Like in the VIH program, owners of MIH sites must register affordable housing units with the regulatory agency or agencies responsible for administering the program or programs covering the units in question. (In addition to IH, a city program, the units may also participate in State programs such as 421-a or Federal programs such as the Low Income Housing Tax Credit, or "LIHTC".) The MIH zoning text would allow alternate provisions to be established in the regulatory agreement in the event of future unanticipated changes to applicable regulations that affect the administration of the MIH program.

#### **Proposed Changes Related to Building Envelope Controls**

The ZQA proposal addresses many of zoning bulk envelope impediments to the construction of affordable housing under contemporary best practices. These changes include addressing bulk issues in the VIH program. However, since the ZQA proposal does not assume adoption of an MIH program, this text amendment includes a limited number of changes to building envelope controls that would be applicable only in certain districts when MIH areas are mapped in the future. These changes are intended to address similar bulk envelope constraints that would be addressed by the ZQA proposal for the VIH program.



**Create a new non-contextual building envelope for MIH developments in R6-R8 districts.** While contextual zoning is frequently mapped in new rezonings, there remain certain areas where it may not be appropriate to apply contextual zoning. For example, parcels located adjacent to rail lines, freeways and within areas without a consistent height context may continue to warrant non-contextual zoning designations.

Height factor (also known as tower-in-the-park) regulations, which is one of two as-of-right building options in these non-contextual districts, allow a building to shift away from such physical constraints or to have a wider range of height variations. However, where MIH would be applied within an area where R6, R7-1, R7-2 or R8 zoning is appropriate, there is not a practical mechanism to incorporate the Inclusionary Housing floor area into height factor floor area and open space regulations. Additionally, the tower-in-the-park building form typically requires more expensive construction methods and is not the optimal bulk configuration for many MIH developments.

The lack of a non-contextual building envelope option for an Inclusionary Housing development would result in a de facto requirement for all MIH buildings to comply with the optional contextual building envelope, sometimes forcing residential units to be located directly against physical constraints or requiring developments to leave a significant portion of their permitted floor area unused.

In order to maintain a non-contextual development option in areas of the city that warrant additional flexibility, such as parcels abutting rail lines, freeways and areas without a consistent height context, the proposal would create an alternative building envelope available to MIH developments for non-contextual R6-R8 districts to facilitate the development of affordable housing.

The proposed height limits are set forth in Figure 1 below.

**Figure 1: Proposed maximum heights for non-contextual building envelope for MIH developments**

Proposed Alternate Bulk Envelopes for Non-Contextual Districts			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6	65'	115'	11
R7	75'	135'	13
R8	105'	215'	21

**Maximum Floor Area in R7X and R7-3 Districts within MIH areas.** Typically, where affordable housing is provided in IHDAs under the voluntary program, the maximum floor area ratio for the applicable zoning district is higher than the same district maximum outside of IHDAs. However, there is currently no difference between the maximum floor area in R7X and R7-3 districts outside and within IHDAs.

In order to ensure the availability of zoning districts with a range of maximum floor areas that can be accommodated within the building forms allowed by their respective height and setback limits, the proposal would increase the maximum permitted floor area ratio from 5.0 to 6.0 for developments utilizing MIH regulations. This change would aid in filling a gap in incremental density increases between R7D (5.6) and R8A (7.2) districts.

The maximum building height of a development within future R7X districts mapped with an

MIH area would be increased from current 125' to 145' to accommodate the additional floor area, which the maximum building height for R7-3 would remain at 185' that is permitted under current regulations.

***Actions Necessary to Facilitate the Project***

A citywide zoning text amendment is necessary to authorize a Mandatory Inclusionary Housing program within the existing Inclusionary Housing program authorized in ZR Section 23-90. The amendment would affect Sections 12-10 (Definitions), 23-10 (Open Space and Floor Area Ratios), 23-90 (Inclusionary Housing), 62-80 (Special Review Provisions), 73-62 (Modifications of Bulk Regulations for Buildings Containing Residences), 74-00 (Powers of the City Planning Commission), and 74-30 (Special Permits Uses and Bulk Modifications) of the *New York City Zoning Resolution*.

## **PROPOSED MANDATORY INCLUSIONARY HOUSING ZONING TEXT**

**9-23-15**

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Sections 12-10 and 23-91;

\* \* \* indicates where unchanged text appears in the Zoning Resolution

[NOTE: Cross-references to Sections and Section titles may reflect the proposed text amendment, Zoning for Quality and Affordability (ZQA – ULURP No. N 160049 ZRY). Section 23-154, paragraphs (a) through (c), are provided for information purposes and are part of ZQA. Section 23-154, paragraph (d) is proposed in this MIH Zoning Text Amendment.]

### **ARTICLE I GENERAL PROVISIONS**

#### **Chapter 2 Construction of Language and Definitions**

\* \* \*

#### **12-10 DEFINITIONS**

\* \* \*

**Incidental alteration – see Alteration, incidental**

**Inclusionary Housing area, Mandatory – see Mandatory Inclusionary Housing area**

#### **Inclusionary Housing designated area**

An “Inclusionary Housing designated area” is a specified area in which the Inclusionary Housing Program is applicable, pursuant to the regulations set forth for such areas in Section 23-90 (INCLUSIONARY HOUSING), inclusive. The locations of ~~such~~ #Inclusionary Housing designated areas# are identified in APPENDIX F of this Resolution or in Special Purpose Districts, as applicable.

\* \* \*

## **Lower density growth management area**

\* \* \*

In the Borough of the Bronx, in Community District 10, #lower density growth management areas# shall also include any R6, R7, C1 or C2 Districts for the purposes of applying the parking provisions of Article II, Chapter 5, and Article III, Chapter 6.

## **Mandatory Inclusionary Housing area**

A “Mandatory Inclusionary Housing area” is a specified area in which the Inclusionary Housing Program is applicable, pursuant to the regulations set forth for such areas in Section 23-90 (INCLUSIONARY HOUSING), inclusive. The locations of #Mandatory Inclusionary Housing areas# are identified in APPENDIX F of this Resolution or in Special Purpose Districts, as applicable.

## **Manhattan Core**

The “Manhattan Core” is the area within Manhattan Community Districts 1, 2, 3, 4, 5, 6, 7 and 8.

\* \* \*

## **23-154** **Inclusionary Housing**

For #developments# or #enlargements# providing #affordable housing# pursuant to the Inclusionary Housing Program, as set forth in Section 23-90, inclusive, the maximum #floor area ratio# permitted in R10 Districts outside of #Inclusionary Housing designated areas# shall be as set forth in paragraph (a) of this Section, and the maximum #floor area ratio# in the #Inclusionary Housing designated areas# existing on (date of adoption) shall be as set forth in paragraph (b) of this Section. Special provisions for certain areas are set forth in paragraph (c) of this Section. The maximum #lot coverage# shall be as set forth in Section 23-153 (For Quality Housing buildings) for the applicable zoning district. For the purpose of this Section, defined terms include those set forth in Section 12-10 and Section 23-911.

### **(a) R10 Districts outside of #Inclusionary Housing designated areas#**

The #residential floor area ratio# of a #compensated zoning lot# may be increased from a base #floor area ratio# of 10.0 to a maximum #floor area ratio# of 12.0 at the rate set forth in this Section, if such #compensated zoning lot# provides #affordable housing# that is restricted to #low income floor area#.

For each square foot of #floor area# provided for a type of #affordable housing# listed in

the table in this Section, the #floor area# of the #compensated zoning lot# may be increased by the number of square feet set forth in the table of this paragraph (a), as applicable. Any #generating site# for which #public funding# has been received within the 15 years preceding the #regulatory agreement date#, or for which #public funding# is committed to be provided subsequent to such date, shall be deemed to be provided with #public funding#.

#### OPTIONS

<u>Without #public funding#</u>	<u>#New construction affordable housing# or #substantial rehabilitation affordable housing#</u>	<u>3.5</u>
	<u>#Preservation affordable housing#</u>	<u>2.0</u>
<u>With #public funding#</u>	<u>#New construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#</u>	<u>1.25</u>

(b) #Inclusionary Housing designated areas#

The #residential floor area# of a #zoning lot# may not exceed the base #floor area ratio# set forth in the table in this Section, except that such #floor area# may be increased on a #compensated zoning lot# by 1.25 square feet for each square foot of #low income floor area# provided, up to the maximum #floor area ratio# specified in the table of this paragraph (b), as applicable. However, the amount of #low income floor area# required to receive such #floor area compensation# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, or any #floor area# increase for the provision of a #FRESH food store#, on the #compensated zoning lot#.

#### Maximum #Residential Floor Area Ratio#

<u>District</u>	<u>Base #floor area ratio#</u>	<u>Maximum #floor area ratio#</u>
<u>R6B</u>	<u>2.00</u>	<u>2.20</u>
<u>R6<sup>1</sup></u>	<u>2.20</u>	<u>2.42</u>
<u>R6<sup>2</sup> R6A R7-2<sup>1</sup></u>	<u>2.70</u>	<u>3.60</u>
<u>R7A R7-2<sup>2</sup></u>	<u>3.45</u>	<u>4.60</u>
<u>R7-3</u>	<u>3.75</u>	<u>5.0</u>
<u>R7D</u>	<u>4.20</u>	<u>5.60</u>

<u>R7X</u>	<u>3.75</u>	<u>5.00</u>
<u>R8</u>	<u>5.40</u>	<u>7.20</u>
<u>R9</u>	<u>6.00</u>	<u>8.00</u>
<u>R9A</u>	<u>6.50</u>	<u>8.50</u>
<u>R9D</u>	<u>7.5</u>	<u>10.0</u>
<u>R9X</u>	<u>7.3</u>	<u>9.70</u>
<u>R10</u>	<u>9.00</u>	<u>12.00</u>

1 for #zoning lots#, or portions thereof, beyond 100 feet of a #wide street#

2 for #zoning lots#, or portions thereof, within 100 feet of a #wide street#

(c) Special provisions for certain areas

(1) Optional provisions for #large-scale general developments# in C4-6 or C5 Districts

Within a #large-scale general development# in a C4-6 or C5 District, the special optional regulations as set forth in this paragraph (c)(1) inclusive, modify the provisions of paragraph (b) of this Section:

(i) The #residential floor area# of a #development# or #enlargement# may be increased by 0.833 square feet for each one square foot of #moderate income floor area#, or by 0.625 square feet for each one square foot of #middle income floor area#, provided that for each square foot of such #floor area compensation#, there is one square foot of #floor area compensation#, pursuant to paragraph (b) of this Section;

(ii) However, the amount of #affordable housing# required to receive such #floor area compensation# need not exceed the amounts specified in this paragraph, (c)(1)(ii). If #affordable housing# is provided for both #low income# and #moderate income households#, the amount of #moderate income floor area# need not exceed 15 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of #low income floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#. If #affordable housing# is provided for both #middle income households# and #low income households#, the amount of #middle income floor area# need not exceed 20 percent of the total

#floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of #low income floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#.

For the purposes of this paragraph, (c)(1), inclusive, #low income floor area# may be considered #moderate income floor area# or #middle income floor area#, and #moderate income floor area# may be considered #middle income floor area#.

(2) Special provisions for #large-scale general developments# in Community District 1 in the Borough of Queens

Special provisions shall apply to #zoning lots# within a #large-scale general development# that contains R6B, R7A and R7-3 Districts within an #Inclusionary Housing designated area#, as follows:

(i) For #zoning lots#, or portions thereof, that are located within R6B, R7A or R7-3 Districts, the base #floor area ratio# set forth in paragraph (b) of this Section shall not apply. No #residential development# or #enlargement# shall be permitted unless #affordable floor area# is provided pursuant to the provisions of this paragraph. The amount of #low-income floor area# provided shall equal no less than 10 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store# and the amount of #moderate-income floor area# provided shall equal no less than 15 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store#. For the purposes of this paragraph (c)(2)(i), inclusive, #low income floor area# may be considered #moderate income floor area#; and

(ii) The amount of #affordable floor area# utilizing #public funding# that may count toward satisfying the #affordable floor area# required in paragraph (c)(2)(i) of this Section shall be determined in accordance with procedures prescribed by the City Planning Commission pursuant to the provisions of Section 74-743 (Special provisions for bulk modification).

(3) Special provisions for #compensated zoning lots#

Special provisions shall apply to #compensated zoning lots# located within:

(i) R6, R7-3 and R8 Districts on #waterfront blocks# in #Inclusionary Housing designated areas# within Community District 1, Borough of

Brooklyn, as set forth in Section 62-352; or

- (ii) the #Special Hudson Yards District#, #Special Clinton District# and #Special West Chelsea District#, as set forth in Sections 93-23, 96-21 and 98-26, respectively.

- (d) Special #floor area# provisions for #zoning lots# in #Mandatory Inclusionary Housing areas#

For #zoning lots# in #Mandatory Inclusionary Housing areas#, the following provisions shall apply:

- (1) Except where permitted by special permit of the Board of Standards and Appeals pursuant to Section 73-624 (Reduction or modification of Mandatory Inclusionary Housing requirements), or as provided in paragraph (d)(4) of this Section 23-154, no #residential development#, #enlargement#, or #conversion# from non-#residential# to #residential use# shall be permitted unless #affordable housing#, as defined in Section 23-911 (General definitions) is provided or a contribution is made to the #affordable housing fund#, as defined in Section 23-911, pursuant to the provisions set forth in paragraph (d)(3)(i) through (d)(3)(iv) of this Section, inclusive.
- (2) The maximum #floor area ratio# for the applicable zoning district in #Inclusionary Housing designated areas# set forth in paragraph (b) of this Section shall apply to any #development#, #enlargement# or #conversion# from non-#residential# to #residential use# that complies with the requirements set forth in paragraph (d)(3) of this Section. However, in an R7-3 or R7X district, the maximum #floor area ratio# shall be 6.0.

In addition, in R6, R7-1, R7-2, R8 and R9 Districts without a letter suffix, where the basic height and setback requirements are utilized pursuant to paragraph (c) of Section 23-952, the maximum #floor area ratio# shall be determined in accordance with the provisions of Section 23-151 (Basic regulations for R6 through R9 Districts).

- (3) Options for compliance with the special #floor area# requirements of paragraph (d) of this Section are set forth in the following paragraphs (d)(3)(i) through (d)(3)(iv). Options 1 and 2 may be applied in #Mandatory Inclusionary Housing areas# singly or in combination. The Workforce Option shall be applied in #Mandatory Inclusionary Housing areas# only in combination with Options 1 or 2. #Income band#, #affordable floor area#, #affordable housing unit# and #guidelines# are as defined in Section 23-911. When a #building# containing #residences# is #enlarged#, the following shall be considered part of the #enlargement# for the purposes of this paragraph (d)(3), inclusive: #residential floor area# that is reconstructed, or #residential floor area# that is located within a #dwelling unit# where the layout has been changed.



- (i) In #Mandatory Inclusionary Housing areas# where Option 1 applies, as set forth in Appendix F, an amount of #affordable floor area# for #qualifying households# shall be provided that is equal to at least 25 percent of the #residential floor area# within such #development#, #enlargement#, or #conversion# from non-#residential# to #residential use#. The weighted average of all #income bands# for #affordable housing units# shall not exceed 60 percent of the #income index#, and no #income band# shall exceed 130 percent of the #income index#.
- (ii) In #Mandatory Inclusionary Housing areas# where Option 2 applies, as set forth in Appendix F, an amount of #affordable floor area# for #qualifying households# shall be provided that is equal to at least 30 percent of the #residential floor area# within such #development#, #enlargement#, or #conversion# from non-#residential# to #residential use#. The weighted average of all #income bands# for #affordable housing units# shall not exceed 80 percent of the #income index#, and no #income band# shall exceed 130 percent of the #income index#.
- (iii) In #Mandatory Inclusionary housing areas# where the Workforce Option applies, as set forth in Appendix F, as an alternative to Option 1 or Option 2, an amount of #affordable floor area# may be provided for #qualifying households# that is equal to at least 30 percent of the #residential floor area# within such #development#, #enlargement#, or #conversion# from non-#residential# to #residential use#. The weighted average of all #income bands# for #affordable housing units# shall not exceed 120 percent of the #income index#, and no #income band# shall exceed 130 percent of the #income index#. Such #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# may not utilize #public funding# except where #HPD# determines that such #public funding# is necessary to support #affordable housing# other than #affordable floor area# satisfying the requirements of this Section. However, the Workforce Option shall not be permitted to be utilized for any #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# within the #Manhattan Core#.
- (iv) A #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# that increases the number of #dwelling units# by no more than 25, and increases #residential floor area# on the #zoning lot# by less than 25,000 square feet, may satisfy the requirements of this Section by making a contribution to the #affordable housing fund#. The amount of such contribution shall be related to the cost of constructing an equivalent amount of #affordable floor area#, as set forth in the #guidelines#.

- (4) The requirements of this Section shall not apply to:

- (i) A single #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# of not more than 10 #dwelling units# and not more than 12,500 square feet of #residential floor area# on a #zoning lot# that existed on the date of establishment of the applicable #Mandatory Inclusionary Housing area#; or
- (ii) a #development#, #enlargement#, or #conversion# from non-#residential# to #residential use# containing no #residences# other than #affordable independent residences for seniors#.

\* \* \*

## **23-90 INCLUSIONARY HOUSING**

### **23-91 Definitions**

For the purposes of this Section, inclusive, matter in italics is defined either in Section 12-10 (DEFINITIONS) or in this Section.

### **23-911 General definitions**

The following definitions shall apply throughout Section 23-90 (INCLUSIONARY HOUSING), inclusive:

#### **Administering agent**

An “administering agent” is the entity responsible for ensuring, pursuant to a #regulatory agreement#, that:

- (a) each subject rental #affordable housing unit# is rented in compliance with such #regulatory agreement# at #rent-up# and upon each subsequent vacancy; or
- (b) each subject #homeownership affordable housing unit# is owned and occupied in compliance with such #regulatory agreement# at #sale# and upon each #resale#.

#### **Affordable floor area**

- (a) Where all of the #dwelling units#, #rooming units# and #supportive housing units# in a

#generating site# or #MIH site#, other than any #super's unit#, are #affordable housing units#, all of the #residential floor area#, or #community facility floor area# for a #supportive housing project#, in such #generating site# or #MIH site# is "affordable floor area."

- (b) Where one or more of the #dwelling units# or #rooming units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#, the #affordable floor area# in such #generating site# is the sum of:
- (1) all of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site#; plus
  - (2) a figure determined by multiplying the #residential floor area# of the #eligible common areas# in such #generating site# by a fraction, the numerator of which is all of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site# and the denominator of which is the sum of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site# plus the #residential floor area# within the perimeter walls of the #dwelling units# or #rooming units# in such #generating site#, other than any #super's unit#, that are not #affordable housing units#.
- (c) Where one or more of the #dwelling units# or #rooming units# in an #MIH site#, other than any #super's unit#, are not #affordable housing units#, the #affordable floor area# in such #MIH site# is the sum of:
- (1) all of the #residential floor area# of the #affordable housing units# in such #MIH site#; plus
  - (2) a figure determined by multiplying the #residential floor area# of the #eligible common areas# in such #MIH site# by a fraction, the numerator of which is all of the #residential floor area# of the #affordable housing units# in such #MIH site# and the denominator of which is the sum of the #residential floor area# of the #affordable housing units# in such #MIH site# plus the #residential floor area# of the #dwelling units# or #rooming units# in such #MIH site#, other than any #super's unit#, that are not #affordable housing units#.

## Affordable housing

"Affordable housing" consists of:

- (a) #affordable housing units#; and
- (b) #eligible common areas#.

## **Affordable housing fund**

In a #Mandatory Inclusionary Housing area#, the “affordable housing fund” is a fund administered by #HPD#, all contributions to which shall be used for development, acquisition, rehabilitation, or preservation of affordable housing, or other affordable housing purposes as set forth in the #guidelines#. Each contribution into such fund shall be reserved, for a minimum period of time as set forth in the #guidelines#, for use in the same Community District in which the #MIH development# making such contribution is located, or within a half-mile of such #MIH development# in an adjacent Community District. Further provisions for the use of such funds may be set forth in the #guidelines#.

## **Affordable housing plan**

An “affordable housing plan” is a plan approved by #HPD# to #develop#, rehabilitate or preserve rental or #homeownership affordable housing# on a #generating site#, pursuant to the provisions of Section 23-90, inclusive.

## **Affordable housing unit**

An “affordable housing unit” is:

- (a) a #dwelling unit#, other than a #super’s unit#, that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by:
  - (1) #low income households#;
  - (2) where permitted by paragraph (c) of Section 23-154 (Inclusionary Housing) 23-953 (Special floor area compensation provisions in specified areas), either #low income households# or a combination of #low income households# and #moderate income households# or #middle income households#; ~~or~~
  - (3) upon #resale# of #homeownership affordable housing units#, other #eligible buyers#, as applicable; or
  - (4) in #Mandatory Inclusionary Housing areas#, #qualifying households#;
- (b) a #rooming unit#, other than a #super’s unit#, that is used for class B occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by #low income households#; or
- (c) a #supportive housing unit# within a #supportive housing project#.

#Affordable housing units# that are restricted to #homeownership#, as defined in Section 23-913, pursuant to a #regulatory agreement#, must be #dwelling units#.

### Capital element

“Capital elements” are, with respect to any #generating site# or #MIH site#, the electrical, plumbing, heating and ventilation systems in such #generating site#, any air conditioning system in such #generating site# and all facades, parapets, roofs, windows, doors, elevators, concrete and masonry in such #generating site# and any other portions of such #generating site# or #MIH site# specified in the #guidelines#.

### Compensated development

In areas other than #Mandatory Inclusionary Housing areas#, A a “compensated development” is a #development#, an #enlargement# of more than 50 percent of the #floor area# of an existing #building# or, where permitted by the provisions of Section 98-262, a #conversion# of a #building#, or portion thereof, from non-#residential use# to #dwelling units#, that is located within a #compensated zoning lot#.

### Compensated zoning lot

A “compensated zoning lot” is a #zoning lot# not located in a #Mandatory Inclusionary Housing area# that contains a #compensated development# and receives an increased #floor area ratio#, pursuant to the provisions of Section 23-154 (Inclusionary Housing) and Section 23-90, inclusive.

### Completion notice

A “completion notice” is a notice from #HPD# to the Department of Buildings stating that the #affordable housing# in all or a portion of any #generating site# or #MIH site# is complete and stating the #affordable floor area# of such #affordable housing#.

### Eligible common area

In a #generating site#, “Eligible eligible common area” includes any #residential floor area# that is located within the perimeter walls of a #super’s unit#, and also includes any #residential floor area# in such #generating site# that is not located within the perimeter walls of any other #dwelling unit# or #rooming unit#, except any #residential floor area# for which a user fee is charged to residents of #affordable housing units#.

In an #MIH site#, an #eligible common area# includes any #residential floor area# that is located

within a #super's unit#, and any #residential floor area# in such #MIH site# that is not located within any other #dwelling unit# or #rooming unit#, but shall not include any #residential floor area# for which a user fee is charged to residents of #affordable housing units#.

### **Floor area compensation**

“Floor area compensation” is any additional #residential floor area# permitted in a #compensated development#, pursuant to the provisions of Section 23-154 (Inclusionary Housing) and Section 23-90, inclusive.

### **Generating site**

A “generating site” is a #building# or #building segment# containing either #residential affordable floor area# or a #supportive housing project#, which generates #floor area compensation#. Non-#residential floor area# on a #generating site#, other than a #supportive housing project#, may not generate #floor area compensation#.

A #generating site# may also be an #MIH site#, provided that no #floor area# that satisfies the requirements of paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154 (Inclusionary Housing) may also generate #floor area compensation#.

### **Grandfathered tenant**

A “grandfathered tenant” is any #household# that:

- (a) occupied an #affordable housing unit# in #preservation affordable housing# or #substantial rehabilitation affordable housing# on the #regulatory agreement date#, pursuant to a lease, occupancy agreement or statutory tenancy under which one or more members of such #household# was a primary tenant of such #affordable housing unit#; and
- (b) has not been certified by the #administering agent# to have an annual income below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #affordable housing unit#; or
- (c) in #homeownership preservation affordable housing# or #homeownership substantial rehabilitation affordable housing#, has been certified by the #administering agent# to have an annual income below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #affordable housing unit#, but has elected not to purchase such #affordable housing unit#.

In #Mandatory Inclusionary Housing areas#, #grandfathered tenants# may include tenants of #buildings# on an #MIH site# that have been or will be demolished, as set forth in the

## #guidelines#.

### **Guidelines**

The “guidelines” are the #guidelines# adopted by #HPD#, pursuant to paragraph (k) of Section 23-96 (Requirements for Generating Sites and MIH Sites).

### **Household**

Prior to #initial occupancy# of an #affordable housing unit#, a “household” is, collectively, all of the persons intending to occupy such #affordable housing unit# at #initial occupancy#. After #initial occupancy# of an #affordable housing unit#, a #household# is, collectively, all of the persons occupying such #affordable housing unit#.

### **HPD**

“HPD” is the Department of Housing Preservation and Development or its successor agency or designee, acting by or through its Commissioner or his or her designee.

### **Income band**

An “income band” is a percentage of the #income index# that is the maximum income for a #qualifying household# at #initial occupancy# of an #affordable housing unit#.

### **Income index**

The “income index” is 200 percent of the Very Low-Income Limit established by the U.S. Department of Housing and Urban Development (HUD) for Multifamily Tax Subsidy Projects (MTSPs) in accordance with Internal Revenue Code Sections 42 and 142, as amended by Section 3009(a) of the Housing and Economic Recovery Act of 2008, as adjusted for household size. #HPD# shall adjust such figure for the number of persons in a #household# in accordance with such methodology as may be specified by HUD or in the #guidelines#. #HPD# may round such figure to the nearest 50 dollars or in accordance with such methodology as may be specified by HUD or in the #guidelines#. If HUD ceases to establish, or changes the standards or methodology for the establishment of, such income limit for MTSPs or ceases to establish the methodology for adjusting such figure for #household# size, the standards and methodology for establishment of the #income index# shall be specified in the #guidelines#.

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## **Initial occupancy**

“Initial occupancy” is:

- (a) in rental #affordable housing#, the first date upon which a particular #household# occupies a particular #affordable housing unit# as a tenant, and shall not refer to any subsequent renewal lease of the same #affordable housing unit# to the same tenant #household#; or
- (b) in #homeownership affordable housing#, the first date upon which a particular #household# occupies a particular #affordable housing unit# as a #homeowner#.

For any #household# occupying an #affordable housing unit# of #preservation affordable housing# or #substantial rehabilitation affordable housing# on the #regulatory agreement date#, #initial occupancy# is the #regulatory agreement date#.

## **Low income floor area**

The “low income floor area” is the #affordable floor area# that is provided for #low income households# or, upon #resale# as defined in Section 23-913, #eligible buyers#.

## **Low income household**

A “low income household” is a #household# having an income less than or equal to the #low income limit# at #initial occupancy#, except that, with regard to #low income floor area# within #preservation affordable housing# or #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #low income household#.

## **Low income limit**

The “low income limit” is 80 percent of the #income index#.

## **Middle income floor area**

The “middle income floor area” is the #affordable floor area# that is provided for #middle income households# or, upon #resale# as defined in Section 23-913, for #eligible buyers#.

## **Middle income household**

A “middle income household” is a #household# having an income greater than the #moderate income limit# and less than or equal to the #middle income limit# at #initial occupancy#, except



that, with regard to #middle income floor area# within #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #middle income household#.

### **Middle income limit**

The “middle income limit” is 175 percent of the #income index#.

### **MIH application**

An “MIH application” is an application submitted to #HPD# that specifies how #affordable housing# will be provided on an #MIH site#, in compliance with the provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive.

### **MIH development**

In #Mandatory Inclusionary Housing areas#, an “MIH development” is a #development#, #enlargement#, or #conversion# that complies with the provisions of paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154 (Inclusionary Housing).

### **MIH site**

An “MIH site” is a #building# containing either #residential affordable floor area# or a #supportive housing project#, which satisfies the special #floor area# provisions for #zoning lots# in #MIH areas# in paragraphs (d)(3)(i) through (d)(3)(iii), as applicable, of Section 23-154 (Inclusionary Housing) for an #MIH development# in a #Mandatory Inclusionary Housing area#.

An #MIH site# may also be a #generating site#, provided that no #floor area# that satisfies the requirements of paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154 may also generate #floor area compensation#.

### **MIH zoning lot**

An “MIH zoning lot” is a #zoning lot# that contains an #MIH development#.

### **Moderate income floor area**

The “moderate income floor area” is the #affordable floor area# that is provided for #moderate income households# or, upon #resale# as defined in Section 23-913, for #eligible buyers#.

### **Moderate income household**

A “moderate income household” is a #household# having an income greater than the #low income limit# and less than or equal to the #moderate income limit# at #initial occupancy#, except that, with regard to #moderate income floor area# within #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #moderate income household#.

### **Moderate income limit**

The “moderate income limit” is 125 percent of the #income index#.

### **New construction affordable housing**

“New construction affordable housing” is #affordable housing# that:

- (a) is located in a #building# or portion thereof that did not exist on a date which is 36 months prior to the #regulatory agreement date#;
- (b) is located in #floor area# for which the Department of Buildings first issued a temporary or permanent certificate of occupancy on or after the #regulatory agreement date#; and
- (c) complies with such additional criteria as may be specified by #HPD# in the #guidelines#.

### **Permit notice**

For #compensated developments#, Aa “permit notice” is a notice from #HPD# to the Department of Buildings stating that building permits may be issued to a #compensated development# to utilize #floor area compensation# from all or a portion of the #affordable floor area# on a #generating site#. Any #permit notice# shall:

- (a) state the amount of #low income floor area#, #moderate income floor area# or #middle income floor area# attributable to such #generating site#;
- (b) state whether the #affordable housing# comprising such #low income floor area#, #moderate income floor area# or #middle income floor area# is #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#;
- (c) state whether the #affordable housing# comprising such #low income floor area#, #moderate income floor area# or #middle income floor area# has utilized #public funding#; and
- (d) specify the amount of such #affordable housing# that the #compensated development# may utilize to generate #floor area compensation#.

For #MIH developments#, a #permit notice# is a notice from #HPD# to the Department of Buildings stating that building permits may be issued for any #development#, #enlargement# or #conversion# subject to the special #floor area# requirements of paragraph (d) of Section 23-154 (Inclusionary Housing). Such #permit notice# shall state the amount of #affordable floor area# provided on an #MIH site# or the amount of #floor area# for which a contribution to the #affordable housing fund# has been made.

### **Preservation affordable housing**

“Preservation affordable housing” is #affordable housing# that:

- (a) is a #generating site# that existed and was legally permitted to be occupied on the #regulatory agreement date#, except as permitted in the #guidelines#; and
- (b) complies with the provisions of Section 23-961, paragraph (e) (Special requirements for rental preservation affordable housing) or Section 23-962, paragraph (f g ) (Special requirements for #homeownership preservation affordable housing#), as applicable.

### **Public funding**

“Public funding” is any grant, loan or subsidy from any Federal, State or local agency or instrumentality, including, but not limited to, the disposition of real property for less than market value, purchase money financing, construction financing, permanent financing, the utilization of bond proceeds and allocations of low income housing tax credits. #Public funding# shall not include the receipt of rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, or an exemption or abatement of real property taxes pursuant to Section 420-a, Section 420-c, Section 421-a, Section 422, Section 488-a or Section 489 of the Real Property Tax Law, Article XI of the Private Housing Finance Law or such other programs of full or partial exemption from or abatement of real property taxation as may be specified in the #guidelines#.

### **Qualifying household**

In a #Mandatory Inclusionary Housing area#, a “qualifying household” is a #low income household#, #moderate income household#, or #middle income household# with an income not exceeding the applicable #income band# as specified in the special #floor area# provisions for #zoning lots# in #MIH areas# in paragraph (d) of Section 23-154 (Inclusionary Housing).

### **Regulatory agreement**

A “regulatory agreement” is an agreement between #HPD# and the owner of the #affordable housing# or, for #MIH sites#, a restrictive declaration or other document as provided in the

#guidelines#, that requires compliance with all applicable provisions of an #affordable housing plan# or #MIH application#, Section 23-90, inclusive, other applicable provisions of this Resolution, and the #guidelines#.

#### **Regulatory agreement date**

The “regulatory agreement date” is, with respect to any #affordable housing#, the date of execution of the applicable #regulatory agreement#. If a #regulatory agreement# is amended at any time, the #regulatory agreement date# is the original date of execution of such #regulatory agreement#, without regard to the date of any amendment.

#### **Regulatory period**

The “regulatory period” is, with respect to any #generating site#, the entire period of time during which any #floor area compensation# generated by the #affordable floor area# on such #generating site# is the subject of a permit, temporary certificate of occupancy or permanent certificate of occupancy issued by the Department of Buildings, or is otherwise under construction or in use in a #compensated development#.

With respect to any #MIH site#, the #regulatory period# is the entire period of time during which #affordable floor area# on such #MIH site# satisfies the requirements of the special #floor area# provisions for #zoning lots# in #MIH areas# in paragraph (d) of Section 23-154 (Inclusionary Housing) for an #MIH development#, is the subject of a permit, temporary certificate of occupancy or permanent certificate of occupancy issued by the Department of Buildings, or is otherwise under construction or in use.

#### **Substantial rehabilitation affordable housing**

“Substantial rehabilitation affordable housing” is #affordable housing# that:

- (a) is a #generating site# that existed on the #regulatory agreement date#; and
- (b) complies with the provisions of Section 23-961, paragraph (f) (Special requirements for rental #substantial rehabilitation affordable housing#), or Section 23-962, paragraph (gh) (Special requirements for #homeownership substantial rehabilitation affordable housing#), as applicable.

#### **Super’s unit**

A “super’s unit” is, in any #generating site# or MIH site, not more than one #dwelling unit# or #rooming unit# that is reserved for occupancy by the superintendent of such #building#.

## **23-912**

### **Definitions applying to rental affordable housing**

The following definitions shall apply to rental #affordable housing#:

#### **Legal regulated rent**

A “legal regulated rent” is, with respect to any #affordable housing unit# subject to #rent stabilization#, the initial #monthly rent# registered with the Division of Housing and Community Renewal at #rent-up# in accordance with paragraph (b) of Section 23-961 (Additional requirements for rental affordable housing).

#### **Maximum monthly rent**

The “maximum monthly rent” is:

- (a) 30 percent of the #low income limit# for an #affordable housing unit# restricted to occupancy by #low income households#, divided by 12, minus the amount of any applicable #utility allowance#;
- (b) 30 percent of the #moderate income limit# for an #affordable housing unit# restricted to occupancy by #moderate income households#, divided by 12, minus the amount of any applicable #utility allowance#; and
- (c) 30 percent of the #middle income limit# for an #affordable housing unit# restricted to occupancy by #middle income households#, divided by 12, minus the amount of any applicable #utility allowance#.

For #MIH sites#, the #maximum monthly rent# for an #affordable housing unit# restricted to occupancy by a #qualifying household# is 30 percent of the #income band# applicable to that unit, divided by 12, minus any applicable utility allowance.

#### **Monthly rent**

The “monthly rent” is the monthly amount charged, pursuant to paragraph (b) of Section 23-961 (Additional requirements for rental affordable housing), to a tenant in an #affordable housing unit#.

#### **Rent stabilization**

“Rent stabilization” is the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974 and all regulations promulgated pursuant thereto or in connection therewith. If the Rent Stabilization Law of 1969 or the Emergency Tenant Protection Act of 1974 is repealed, invalidated or allowed to expire, #rent stabilization# shall be defined as set forth in the

#guidelines#.

### **Rent-up**

“Rent-up” is the first rental of vacant #affordable housing units# on or after the #regulatory agreement date#, except that, where one or more #affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, #rent-up# shall have the same meaning as #regulatory agreement date#.

### **Rent-up date**

The “rent-up date” is the date upon which leases for a percentage of vacant #affordable housing units# set forth in the #guidelines# have been executed, except that, where one or more #affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, the #rent-up date# is the #regulatory agreement date#.

### **Supportive housing project**

A “supportive housing project” is a non-profit institution with sleeping accommodations, as specified in Section 22-13 (Use Group 3), where:

- (a) 100 percent of the #supportive housing units# within such #generating site#, have been restricted to use as #affordable housing# for persons with special needs pursuant to a #regulatory agreement#;
- (b) such #generating site# does not contain any #dwelling unit# or #rooming unit# that is not #accessory#; and
- (c) such #generating site# is not a #compensated development#.

However, in a #Mandatory Inclusionary Housing area#, a #supportive housing project# is a #building# or a portion thereof that is a non-profit institution with sleeping accommodations, as specified in Section 22-13 (Use Group 3) restricted to use as #affordable housing# for persons with special needs pursuant to a #regulatory agreement#.

### **Supportive housing unit**

A “supportive housing unit” is #floor area# in a #supportive housing project# that consists of sleeping quarters for persons with special needs and any private living space appurtenant thereto.

## **Utility allowance**

A “utility allowance” is a monthly allowance set by #HPD# for the payment of utilities where the tenant of an #affordable housing unit# is required to pay all or a portion of the utility costs with respect to such #affordable housing unit# in addition to any payments of #monthly rent#.

## **23-913**

### **Definitions applying to homeownership affordable housing**

The following definitions shall apply to #homeownership affordable housing#, where #homeownership# is as defined in this Section:

#### **Appreciated price**

The “appreciated price” for any #homeownership affordable housing unit# is the product of the #sale# or #resale# price of such #homeownership affordable housing unit# on the previous #sale date# and the #appreciation index# applicable at #resale# as specified in the #guidelines#.

#### **Appreciation cap**

The “appreciation cap” is the #resale# price at which the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid by the #homeowner# would be equal to 30 percent of:

- (a) 125 percent of the #income index# for a #homeownership affordable housing unit# that was restricted to occupancy by #low income households# at #sale#; or
- (b) 175 percent of the #income index# for a #homeownership affordable housing unit# that was restricted to occupancy by #moderate income households# at #sale#; or
- (c) 200 percent of the #income index# for a #homeownership affordable housing unit# that was restricted to occupancy by #middle income households# at #sale#.

For #MIH sites#, the multiple of the #income index# for #homeownership affordable housing units# occupied by #qualifying households# shall be as specified in the #guidelines#.

#### **Appreciation index**

The “appreciation index” is 100 until August 1, 2010. On or after August 1, 2010, the #appreciation index# shall be a number greater than 100, representing the cumulative increase in

#resale# price of a #homeownership affordable housing unit# permitted pursuant to the annual rates of increase established by #HPD#.

#HPD# shall set the annual rate of increase at the same rate as the percentage change in the Consumer Price Index for all urban consumers, as defined by the U.S. Bureau of Labor Statistics, for the 12 months ended on June 30 of that year, plus one percent per year, but the annual rate of increase shall be no less than one percent per year. #HPD# shall adjust the Consumer Price Index component of the #appreciation index# on August 1 of each calendar year, commencing on August 1, 2010, based on the percentage change in the Consumer Price Index for the 12 months ended on June 30 of that calendar year. For a fraction of a year, the components of the #appreciation index# shall be set as specified in the #guidelines#. #HPD# may adjust the methodology for calculating the #appreciation index# not more than once every two years in accordance with the #guidelines#.

### **Commencement date**

The “commencement date” is the date upon which #sales# for a percentage of #homeownership affordable housing units# in a #generating site# or #MIH site# set forth in the #guidelines# have been completed, except that, where one or more #homeownership affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, the #commencement date# is the #regulatory agreement date#.

### **Condominium association**

A “condominium association” is an organization of condominium #homeowners#, with a form of governance specified in the #guidelines#, that manages the common areas and #capital elements# of a #generating site# or #MIH site#.

### **Cooperative corporation**

A “cooperative corporation” is any corporation organized exclusively for the purpose of providing housing accommodations to shareholders who are persons or families entitled, by reason of ownership of shares in such corporation, to residential occupancy.

### **Down payment**

The “down payment” is a payment that is not secured by any form of debt, made on or before the #sale date# by the #eligible buyer# approved by the #administering agent# to purchase a #homeownership affordable housing unit#.



## Eligible buyer

An “eligible buyer” is a #household# that qualifies to buy a specific #homeownership affordable housing unit#. Such a #household# shall:

- (a) except in the case of #succession#:
  - (1) be, at the time of application for an initial #sale#, a #low income household#, #moderate income household#, ~~or~~ #middle income household# or #qualifying household# for which, at the #initial price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income. However, for a #household# that resided on a #generating site# or #MIH site# on the date of submission of an #affordable housing plan#, #HPD# may waive the requirement that housing costs be not less than 25 percent of such #household's# income;
  - (2) be, at the time of application for a #resale#, in the case of an #affordable housing unit# initially limited to #sale# to a #low income household#, #moderate income household#, ~~or~~ #middle income household#, or #qualifying household#, any #household# for which, at the #maximum resale price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income;
  - (3) have cash or equivalent assets that are at least equal to the required #down payment# for such #affordable housing unit#. However, #HPD# may waive this requirement for a #household# that resided on a #generating site# or #MIH site# on the date of submission of an #affordable housing plan# to #HPD#; and
  - (4) meet such additional eligibility requirements as may be specified in the #guidelines#.
- (b) in the case of #succession#:
  - (1) be, at the time of application, a #household# for which, at the #maximum resale price#, the combined cost of #monthly fees#, #imputed mortgage payments#, utilities and property taxes for the subject #homeownership affordable housing unit# is not less than 25 percent of such #household's# income; and
  - (2) meet such additional eligibility requirements as may be specified in the #guidelines#.

A #grandfathered tenant# is not an #eligible buyer# unless such #grandfathered tenant# has been certified by the #administering agent# to have an annual income at or below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such

#homeownership affordable housing unit# or, for #MIH sites#, meets such qualifications for eligibility specified in the #guidelines#.

### **Family member**

“Family member” shall have the meaning set forth in the #guidelines#.

### **Homeowner**

A “homeowner” is a person or persons who:

- (a) owns a condominium #homeownership affordable housing unit# and occupies such condominium #homeownership affordable housing unit# in accordance with owner occupancy requirements set forth in the #guidelines#; or
- (b) owns shares in a #cooperative corporation#, holds a proprietary lease for an #homeownership affordable housing unit# owned by such #cooperative corporation# and occupies such #homeownership affordable housing unit# in accordance with owner occupancy requirements set forth in the #guidelines#.

### **Homeownership**

“Homeownership” is a form of tenure for housing, including #dwelling units# occupied by either the owner as a separate condominium, a shareholder in a #cooperative corporation# pursuant to the terms of a proprietary lease, a #grandfathered tenant# or an authorized sublettor pursuant to the #guidelines#.

### **Imputed mortgage payment**

An “imputed mortgage payment” is the maximum #mortgage payment# at prevailing interest rates for a qualifying #mortgage# that could be paid to purchase a #homeownership affordable housing unit# at the #maximum resale price#, calculated in accordance with the #guidelines#.

### **Initial price**

The “initial price” is the price at which a #homeownership affordable housing unit# may be offered for #sale# for the first time, pursuant to a #regulatory agreement#.

### **Maximum resale price**

The “maximum resale price” for a #homeownership affordable housing unit# is the lesser of the

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**#appreciated price#** or the **#appreciation cap#** for such **#homeownership affordable housing unit#**.

### **Monthly fees**

The “monthly fees” are any payments charged to a **#homeowner#** by a **#cooperative corporation#** or **#condominium association#** to provide for the reimbursement of the applicable **#homeownership affordable housing unit’s#** share of the expenses of such **#cooperative corporation#** or **#condominium association#**, as permitted by the **#regulatory agreement#**.

### **Mortgage**

A “mortgage” is a mortgage loan, or a loan to purchase shares in a **#cooperative corporation#**, that has been approved by the **#administering agent#** and that has a fixed rate of interest, a term of at least 30 years at every **#sale#** and **#resale#**, a value not exceeding 90 percent of the **#sale#** price of such **#homeownership affordable housing unit#** at the time of the initial **#sale#** or 90 percent of the **#maximum resale price#** of such **#homeownership affordable housing unit#** at any time after the initial **#sale#**, and that is otherwise in compliance with the **#guidelines#**.

### **Mortgage payment**

The “mortgage payment” is any monthly repayment of principal and interest on a **#mortgage#**.

### **Resale**

A “resale” is any transfer of title to a condominium **#homeownership affordable housing unit#** after the first **#sale#** or any transfer of ownership of the shares in a **#cooperative corporation#** which are appurtenant to an **#homeownership affordable housing unit#** after the first **#sale#**.

### **Sale**

A “sale” is the first transfer of title to a condominium **#homeownership affordable housing unit#** or the first transfer of ownership of the shares in a **#cooperative corporation#** which are appurtenant to an **#homeownership affordable housing unit#** on or after the **#regulatory agreement date#**.

### **Sale date**

A “sale date” is the date of the **#sale#** or **#resale#** of any **#homeownership affordable housing unit#**. However, for **#homeownership affordable housing units#** in **#preservation affordable**

housing# or #substantial rehabilitation affordable housing# occupied by #grandfathered tenants# on the #regulatory agreement date#, the initial #sale date# shall be the #regulatory agreement date#.

## **Succession**

“Succession” is a #resale# from a #homeowner# to a #family member# of such #homeowner#.

## **23-92**

### **General Provisions**

The Inclusionary Housing Program is established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare. The requirements of this program are set forth in Section 23-90 (INCLUSIONARY HOUSING), inclusive.

Wherever the provisions of Section 23-90, inclusive, provide that approval is required, #HPD# may specify the form of such approval in the #guidelines#.

## **23-93**

### **Applicability**

## **23-931**

### **Lower income housing plans approved prior to July 29, 2009**

Any #lower income housing plan#, as defined by Section 23-93 prior to July 29, 2009, that has been approved by #HPD# prior to such date, and results, within one year after such approval, in the execution of a restrictive declaration pursuant to Section 23-95, paragraph (e), as such Section existed prior to July 29, 2009, shall be governed solely by the regulations in effect prior to July 29, 2009, unless a #regulatory agreement# with respect thereto specifically provides to the contrary. However, Section 23-95~~53~~ (Additional requirements for compensated developments and MIH developments) shall apply to any permits or certificates of occupancy for #compensated developments# issued on or after July 29, 2009.

The #floor area ratio# of a #compensated development# may be increased in exchange for #lower income housing#, pursuant to a #lower income housing plan#, as both terms were defined by Section 23-93 prior to July 29, 2009, provided such #lower income housing# complies with all applicable provisions of Section 23-90 (INCLUSIONARY HOUSING) in effect prior to July 29, 2009, except as provided in this Section. Where such a #compensated development# is located in an R10 District outside of #Inclusionary Housing designated areas#, the provisions of Section ~~23-951 (Floor area compensation in R10 Districts other than Inclusionary Housing designated areas)~~ paragraph (a) of Section 23-154 (Inclusionary Housing) shall not apply, and Section 23-941 (In R10 Districts other than Inclusionary Housing designated areas) as such

Section existed prior to July 29, 2009, shall apply.

Any #lower income housing plan#, as such term was defined prior to July 29, 2009, that has been approved by #HPD# prior to such date, and any legal document related thereto, may be modified by #HPD#, to apply the provisions of paragraph (b), (Monthly rent), of Section 23-961 to such #lower income housing plan#.

#### **23-932 R10 districts**

The Inclusionary Housing Program shall apply in all R10 Districts located in #Inclusionary Housing designated areas#, subject to the provisions of paragraph (b) of Section 23-154 (Inclusionary Housing), and in all R10 districts located in #Mandatory Inclusionary Housing areas#, pursuant to the provisions of paragraph (d) of such Section. The Inclusionary Housing Program shall apply in all other R10 Districts, subject to the provisions of paragraph (a) of Section 23-154 ~~Section 23-951 (Floor area compensation in R10 Districts other than Inclusionary Housing designated areas)~~, as applicable.

#### **23-933 Inclusionary Housing designated areas and Mandatory Inclusionary Housing areas**

The Inclusionary Housing Program shall apply in #Inclusionary Housing designated areas#, and #Mandatory Inclusionary Housing areas#.

The Inclusionary Housing Program shall also apply in special purpose districts when specific zoning districts or areas are defined as #Inclusionary Housing designated areas# or #Mandatory Inclusionary Housing areas# within the special purpose district.

The Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in Section 74-32 (Additional Considerations for Special Permit Use and Bulk Modifications), in Special Purpose Districts as set forth in Section 23-934 (Special permit approval in Special Purpose Districts), and in waterfront areas as set forth in Section 62-831 (General Provisions).

#Inclusionary Housing designated areas# and #Mandatory Inclusionary Housing areas#, with the applicable income mix options for each #Mandatory Inclusionary Housing area#, are listed in APPENDIX F of this Resolution.

#### **23-934 Special permit approval in Special Purpose Districts**

Where a special purpose district includes a provision to grant modification of #use# or #bulk# by

special permit of the City Planning Commission, and an application for such special permit would allow a significant increase in #residential floor area# where the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions). However, where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed #development#, #enlargement# or #conversion#, or where the area affected by the special permit is eligible to receive transferred development rights pursuant to the Hudson River Park Act, as amended, the Commission may modify the requirements of such paragraph (d).

## 23-94

### Methods of Providing Affordable Housing

- (a) Except in #Mandatory Inclusionary Housing areas#, #Aaffordable housing# shall be either #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#. In #Mandatory Inclusionary Housing areas#, #affordable housing# shall be either #new construction affordable housing# or a #conversion# from non-#residential# to #residential use#. Such #conversions# shall comply with the requirements of Section 23-90, inclusive, applicable to #new construction affordable housing#.
- (b) When determining whether #affordable housing# is #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing# in order to calculate #floor area compensation#, or when making a determination of which #building# or #building segment# constitutes a #generating site#, #HPD# may separately consider each #building# or #building segment# on a #zoning lot#. Where any such #building# consists of two or more contiguous sections separated by walls or other barriers, #HPD# may consider all relevant facts and circumstances when determining whether to consider the sections of such #building# separately or collectively, including, but not limited to, whether such sections share systems, utilities, entrances, common areas or other common elements and whether such sections have separate deeds, ownership, tax lots, certificates of occupancy, independent entrances, independent addresses or other evidence of independent functional use.
- (c) The amount of #affordable floor area# in any #generating site# or #MIH site# shall be determined based upon plans for such #generating site# or #MIH site# which have been approved by the Department of Buildings and which indicate thereon the amount of #floor area# devoted to #affordable housing# and the amount of #floor area# devoted to other #residential uses#. However, for #generating sites# where the Department of Buildings does not require #floor area# calculations, the amount of #affordable floor area# shall be determined by methods specified in the #guidelines#.

- (d) The amount of #low income#, #moderate income# and #middle income floor area# in a #generating site#, and the amount of #qualifying floor area# for any income category in an #MIH site#, shall be determined in the same manner as the calculation of #affordable floor area#.
- (e) #Affordable housing units# shall be either rental #affordable housing# or #homeownership affordable housing#.
- (f) An #MIH site# that is part of an #MIH zoning lot# and contains no #dwelling units# other than #affordable housing units# shall be either a #building# that:
  - (1) shares a common #street# entrance with another #building# on the #zoning lot# that contains #dwelling units# other than #affordable housing units#; or
  - (2) is independent, from grade at the #street wall line# to the sky, of any other #building# on the #zoning lot# containing #dwelling units# other than #affordable housing units#. Such #building# shall have its primary entrance on a #street# frontage that has primary entrances for other #residential buildings#, except where #HPD# determines that the primary entrance is located in a manner that does not stigmatize occupants of #affordable housing units#.

## 23-95

### Compensated Zoning Lots and MIH Zoning Lots

The #residential floor area ratio# of a #compensated zoning lot# may be increased, and the #residential floor area ratio# of an #MIH zoning lot# shall be determined, in accordance with the applicable provisions of Section 23-154 (Inclusionary Housing).

**[THE FOLLOWING SECTIONS 23-951 THROUGH 23-953 HAVE BEEN MOVED TO PARAGRAPHS (a) THROUGH (c) OF SECTION 23-154]:**

## ~~23-951~~

### ~~Floor-area-compensation in R10 Districts other than Inclusionary Housing designated areas~~

~~The #residential floor area ratio# of a #compensated zoning lot# may be increased from 10.0 to a maximum of 12.0 at the rate set forth in this Section, if such #compensated zoning lot# provides #affordable housing# that is restricted to #low income floor area#.~~

~~For each square-foot of #floor area# provided for a type of #affordable housing# listed in the table in this Section, the #floor area# of the #compensated zoning lot# may be increased by the number of square feet set forth in the table, as applicable. Any #generating site# for which #public funding# has been received within the 15 years preceding the #regulatory agreement~~

~~date#, or for which #public funding# is committed to be provided subsequent to such date, shall be deemed to be provided with #public funding#.~~

#### OPTIONS

<del>Without #public funding#</del>	<del>#New construction affordable housing# or #substantial rehabilitation affordable housing#</del>	<del>3.5</del>
	<del>#Preservation affordable housing#</del>	<del>2.0</del>
<del>With #public funding#</del>	<del>#New construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#</del>	<del>1.25</del>

#### 23-952

#### Floor area compensation in Inclusionary Housing designated areas

~~The provisions of this Section shall apply in #Inclusionary Housing designated areas# set forth in APPENDIX F of this Resolution.~~

~~The #residential floor area# of a #zoning lot# may not exceed the base #floor area ratio# set forth in the table in this Section, except that such #floor area# may be increased on a #compensated zoning lot# by 1.25 square feet for each square foot of #low income floor area# provided, up to the maximum #floor area ratio# specified in the table. However, the amount of #low income floor area# required to receive such #floor area compensation# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, or any #floor area# increase for the provision of a #FRESH food store#, on the #compensated zoning lot#.~~

#### ~~Maximum #Residential Floor Area Ratio#~~

<del>District</del>	<del>Base #floor area ratio#</del>	<del>Maximum #floor area ratio#</del>
<del>R6B</del>	<del>2.00</del>	<del>2.20</del>
<del>R6<sup>1</sup></del>	<del>2.20</del>	<del>2.42</del>
<del>R6<sup>2</sup>-R6A-R7-2<sup>1</sup></del>	<del>2.70</del>	<del>3.60</del>
<del>R7A-R7-2<sup>2</sup></del>	<del>3.45</del>	<del>4.60</del>
<del>R7-3</del>	<del>3.75</del>	<del>5.0</del>
<del>R7D</del>	<del>4.20</del>	<del>5.60</del>
<del>R7X</del>	<del>3.75</del>	<del>5.00</del>



R8	5.40	7.20
R9	6.00	8.00
R9A	6.50	8.50
R9D	7.5	10.0
R9X	7.3	9.70
R10	9.00	12.00

<sup>1</sup> ~~\_\_\_\_\_ for #zoning lots#, or portions thereof, beyond 100 feet of a #wide street#~~

<sup>2</sup> ~~\_\_\_\_\_ for #zoning lots#, or portions thereof, within 100 feet of a #wide street#~~

### **23-953**

#### **Special floor area compensation provisions in specified areas**

(a) ~~Optional provisions for #large-scale general developments# in C4-6 or C5 Districts~~

~~Within a #large-scale general development# in a C4-6 or C5 District, the special optional regulations as set forth in this paragraph, (a), inclusive, modify the provisions of Section 23-952 (Floor area compensation in Inclusionary Housing designated areas):~~

- ~~(1) The #residential floor area# of a #development# or #enlargement# may be increased by 0.833 square feet for each one square foot of #moderate income floor area#, or by 0.625 square feet for each one square foot of #middle income floor area#, provided that for each square foot of such #floor area compensation#, there is one square foot of #floor area compensation#, pursuant to Section 23-952;~~
- ~~(2) However, the amount of #affordable housing# required to receive such #floor area compensation# need not exceed the amounts specified in this paragraph, (a)(2). If #affordable housing# is provided for both #low income# and #moderate income households#, the amount of #moderate income floor area# need not exceed 15 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of #low income floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#. If #affordable housing# is provided for both #middle income households# and #low income households#, the amount of #middle income floor area# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of #low income floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the~~

~~#zoning lot#.~~

~~For the purposes of this paragraph, (a), inclusive, #low income floor area# may be considered #moderate income floor area# or #middle income floor area#, and #moderate income floor area# may be considered #middle income floor area#.~~

~~(b) — Special provisions for #large-scale general developments# in Community District 1 in the Borough of Queens~~

~~— Special provisions shall apply to #zoning lots# within a #large-scale general development# that contains R6B, R7A and R7-3 Districts within an #Inclusionary Housing designated area#, as follows:~~

~~(1) — For #zoning lots#, or portions thereof, that are located within R6B, R7A or R7-3 Districts, the base #floor area ratio# set forth in Section 23-952 shall not apply. No #residential development# or #enlargement# shall be permitted unless #affordable floor area# is provided pursuant to the provisions of this paragraph. The amount of #low income floor area# provided shall equal no less than 10 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store# and the amount of #moderate income floor area# provided shall equal no less than 15 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store#. For the purposes of this paragraph (b)(1), inclusive, #low income floor area# may be considered #moderate income floor area#; and~~

~~(2) — The amount of #affordable floor area# utilizing #public funding# that may count toward satisfying the #affordable floor area# required in paragraph (b)(1) of this Section shall be determined in accordance with procedures prescribed by the City Planning Commission pursuant to the provisions of Section 24-243 (Special provisions for bulk modification).~~

~~(c) — Special provisions for #compensated zoning lots#~~

~~— Special provisions shall apply to #compensated zoning lots# located within:~~

~~(1) — R6, R7-3 and R8 Districts on #waterfront blocks# in #Inclusionary Housing designated areas# within Community District 1, Borough of Brooklyn, as set forth in Section 62-352; or~~

~~(2) — the #Special Hudson Yards District#, #Special Clinton District# and #Special West Chelsea District#, as set forth in Sections 93-23, 96-21 and 98-26, respectively.~~

### **23-954-23-951**

#### **Height and setback for compensated developments in Inclusionary Housing designated areas**

In #Inclusionary Housing designated areas#, the #compensated development# shall comply with the height and setback regulations of Sections 23-66 or 35-65 (Height and Setback Requirements for Quality Housing Buildings)~~23-633 (Street wall location and height and setback regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts)~~, as applicable, except that:

- (a) in #Special Mixed Use Districts#, the #compensated development# shall comply with the provisions of paragraphs (a) or (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations), as applicable. However, where the #Residence District# designation is an R6 District without a letter suffix, the #compensated development# shall comply with the height and setback regulations of Section 23-66 ~~Section 23-633~~, regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program;
- (b) in R10 Districts without a letter suffix, the #compensated development# shall comply with the underlying height and setback regulations for such district; and
- (c) on #waterfront blocks# and in R7-3 Districts, the #compensated development# shall comply with the special regulations applying in the #waterfront area# set forth in Section 62-30 (SPECIAL BULK REGULATIONS), inclusive.

### **23-952**

#### **Height and setback in Mandatory Inclusionary Housing areas**

In #Mandatory Inclusionary Housing areas#, the provisions of Section 23-951 shall apply to #MIH developments#, except as modified in this Section.

- (a) In R6, R7 and R8 Districts without a letter suffix, the alternative height and setback regulations for certain #Quality Housing buildings# in non-contextual districts as set forth in paragraph (b) of Section 23-664 may apply to any #building# on a #zoning lot# located within an #MIH area#. Such #zoning lot# need not be located within 150 feet of: an open railroad right-of-way in active use; a limited-access expressway, freeway, parkway or highway, all of which prohibit direct vehicular access to abutting land; or an elevated #street# located on a bridge that prohibits direct vehicular access.
- (b) In R9 Districts without a letter suffix, the regulations of Section 23-651 (Tower-on-a-base) may apply, provided such #MIH development# is on a #zoning lot# that meets the requirements set forth in paragraph (a) of Section 23-65 (Tower Regulations).
- (c) In R6-R9 Districts without a letter suffix within #Mandatory Inclusionary Housing areas#, the height and setback regulations of Section 23-64 (Basic Height and Setback

Regulations) may apply. In addition, for R9 districts that do not meet the requirements of paragraphs (a) and (c) of Section 23-65 (Tower Regulations), the tower provisions of Section 23-652 (Standard tower) may apply, subject to the #lot coverage# provisions of Section 23-65. However, when the height and setback and tower regulations specified in this paragraph are utilized, the maximum #floor area ratio# on an #MIH zoning lot# shall be determined in accordance with the provisions of Section 23-151 (Basic regulations for R6 through R9 Districts).

### **23-955 953**

#### **Additional requirements for compensated developments and MIH developments**

- (a) #Compensated development# or #MIH development# building permits
- (1) #HPD# may issue a #permit notice# to the Department of Buildings at any time on or after the #regulatory agreement date#. The Department of Buildings may thereafter issue building permits to a #compensated development# that utilizes #floor area compensation#, or an #MIH development#, based on the #affordable housing# described in such #permit notice#.
  - (2) If #HPD# does not receive confirmation that the #regulatory agreement# has been recorded within 45 days after the later of the #regulatory agreement date# or the date upon which #HPD# authorizes the recording of the #regulatory agreement#, #HPD# shall suspend or revoke such #permit notice#, notify the Department of Buildings of such suspension or revocation and not reinstate such #permit notice# or issue any new #permit notice# until #HPD# receives confirmation that the #regulatory agreement# has been recorded or any applicable alternate procedure has been completed. Upon receipt of notice from #HPD# that a #permit notice# has been suspended or revoked, the Department of Buildings shall suspend or revoke each building permit issued pursuant to such #permit notice# which is then in effect for any #compensated development# or #MIH development#.
- (b) #Compensated development# or #MIH development# certificates of occupancy
- (1) The Department of Buildings shall not issue a temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area compensation# or #MIH development# until #HPD# has issued a #completion notice# with respect to the #affordable housing# that generates such #floor area compensation# or satisfies the requirements of paragraph (d) of Section 23-154 (Inclusionary Housing). However, where any #story# of a #compensated development# or #MIH development# contains one or more #affordable housing units#, the Department of Buildings may issue any temporary or permanent certificate of occupancy for such #story# if such temporary or permanent certificate of occupancy either includes each #affordable housing unit# located in such #story# or only includes #dwelling units# or #rooming units# that are #affordable housing units#. Nothing in the preceding sentence shall be deemed to prohibit the granting of a temporary or permanent certificate of

occupancy for a #super's unit#.

- (2) #HPD# shall not issue a #completion notice# with respect to any portion of any #generating site# or #MIH site# unless:
- (i) the Department of Buildings has issued temporary or permanent certificates of occupancy for all #affordable housing# described in such #completion notice# and such certificates of occupancy have not expired, been suspended or been revoked; or
  - (ii) where a #generating site# contains #affordable housing# that had a valid certificate of occupancy on the #regulatory agreement date# and no new temporary or permanent certificate of occupancy is thereafter required for the creation of such #affordable housing#, #HPD# has determined that all renovation and repair work required by the applicable #regulatory agreement# has been completed and all obligations with respect to the creation of such #affordable housing# have been fulfilled in accordance with the applicable #regulatory agreement#.

## 23-96

### Requirements for Generating Sites or MIH Sites

#Affordable housing# in a #generating site# or #MIH site# shall meet each of the requirements set forth in this Section for the entire #regulatory period#.

- (a) Location of #generating site# or #MIH site# and #compensated zoning lot# or #MIH zoning lot#

Where a #generating site# or #MIH site# is not located within the #compensated zoning lot# for which it generates #floor area compensation# or the #MIH zoning lot#, as applicable:

- (1) the #generating site# or #MIH site# and the #compensated zoning lot# or the #MIH zoning lot#, as applicable, shall be located within the same Community District; or
- (2) the #generating site# or #MIH site# and the #compensated zoning lot# or the #MIH zoning lot#, as applicable, shall be located in adjacent community districts and within one-half mile of each other, measured from the perimeter of each #zoning lot#.

However, special rules for the location of a #generating site# and a #compensated zoning lot# apply in Community District 1, Borough of Brooklyn, where the provisions of paragraph (a)(2) of this Section shall apply only to adjacent community districts located in the Borough of Brooklyn; in the #Special Clinton District#, pursuant to the provisions

of Section 96-21 (Special Regulations for 42nd Street Perimeter Area); in the #Special Downtown Jamaica District#, pursuant to the provisions of Section 115-211 (Special Inclusionary Housing regulations); and in the #Special Southern Hunters Point District#, pursuant to the provisions of Section 125-22 (Newtown Creek Subdistrict).

(b) Distribution of #affordable housing units#

In #new construction affordable housing# or #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# or #rooming units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#:

- (1) the #affordable housing units# shall be distributed on not less than 65 percent of the #residential stories# of such #generating site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#; and
- (2) not more than one-third of the #dwelling units# and #rooming units# on any #story# of such #generating site# shall be #affordable housing units#, unless not less than one-third of the #dwelling units# and #rooming units# on each #residential story# of such #generating site# are #affordable housing units#. However, on a #residential story# with fewer than three #dwelling units# or #rooming units#, only one #dwelling unit# or #rooming unit# may be an #affordable housing unit#, unless not less than one #dwelling unit# or #rooming unit# on each floor is an #affordable housing unit#.

In an #MIH site#, where one or more of the #dwelling units# or #rooming units#, other than any #super's unit#, are not #affordable housing units#, the #affordable housing units# shall share a common primary entrance with the other #dwelling units# or #rooming units#.

In addition, except where all #affordable housing units# are rental #affordable housing# and all other #dwelling units# are #homeownership# housing, any #affordable housing units# other than #supportive housing units# or #affordable independent residences for seniors# shall be distributed on at least 50 percent of the #residential stories# of such #MIH site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#.

However, #HPD# may waive such distribution requirements for any #new construction affordable housing# that is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing#, or for #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

(c) Bedroom mix of #affordable housing units#

- (1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, are not #affordable housing units#, either:
  - (i) the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain a bedroom mix at least proportional to the bedroom mix of the #dwelling units# in the #generating site#, other than any #super's unit#, that are not #affordable housing units#; or
  - (ii) not less than 50 percent of the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain one or more bedrooms.

However, such bedroom mix requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#. #HPD# may also waive such ~~distribution-bedroom mix~~ requirements for any #new construction affordable housing# that either is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section, or is located on an #interior lot# or #through lot# with less than 50 feet of frontage along any #street#. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

- (2) Where all of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, in #new construction affordable housing# and #substantial rehabilitation affordable housing# are #affordable housing units#, not less than 50 percent of such #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of such #affordable housing units# shall contain one or more bedrooms. However, such bedroom mix requirements shall not apply to #affordable housing# for seniors in an #MIH site#. #HPD# may also waive these requirements for any #affordable housing# that is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.
- (3) All of the #supportive housing units# in a #generating site# or #MIH site# shall be #affordable housing units# and shall contain such configuration as #HPD# shall

require.

- (4) For purposes of this paragraph, (c), inclusive, fractions equal to or greater than one-half resulting from any calculation shall be considered to be one #dwelling unit#.

(d) Size of #affordable housing units#

- (1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, an #affordable housing unit# in a #generating site# shall contain not less than:
  - (i) 400 square feet of #floor area# within the perimeter walls for a zero bedroom #dwelling unit#; or
  - (ii) 575 square feet of #floor area# within the perimeter walls for a one bedroom #dwelling unit#; or
  - (iii) 775 square feet of #floor area# within the perimeter walls for a two bedroom #dwelling unit#; or
  - (iv) 950 square feet of #floor area# within the perimeter walls for a three bedroom #dwelling unit#.

For an #MIH site#, the above requirements shall apply, except that #HPD# may specify the method of measuring #floor area# within #affordable housing units# in the #guidelines#, compliant with Department of Buildings practice, and where #dwelling units# that are not #affordable housing units# have a smaller average size than the minimum size specified for a #dwelling unit# of a particular bedroom count, such smaller average size may apply. In addition, these unit size requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#.

However, #HPD# may also waive such ~~distribution-unit size~~ requirements for any #new construction affordable housing# that is participating in a Federal, State or local program where such #generating site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

- (2) Where all of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, in #new construction# or #substantial rehabilitation affordable housing# are #affordable housing units#, #HPD# may waive such square footage requirements for any #affordable housing unit# that is participating in a Federal, State or local program where such #generating site# cannot comply with both the



regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive such square footage requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

- (3) #Supportive housing units# shall comply with the size requirements specified by #HPD#.
- (e) #Administering agent#
- (1) #HPD# shall approve each #administering agent# and may revoke such approval at any time before or during the #regulatory period#.
  - (2) For #generating sites#, Aan #administering agent# shall be a not-for-profit entity and shall not be, or be an affiliate of, an owner or managing agent of the #generating site#, unless #HPD# approves such owner, managing agent or affiliate to serve as the #administering agent# upon a determination that either:
    - (i) the #affordable housing# is participating in a Federal, State or local program that provides adequate independent means of ensuring compliance with the #regulatory agreement#; or
    - (ii) the owner and any such managing agent or affiliate are not-for-profit entities and there are adequate safeguards to ensure that such entities comply with the #regulatory agreement#.
  - (3) For #MIH sites#, the #administering agent# may be selected as provided for #generating sites#, or #HPD# may require that the #administering agent# be selected from a list of qualified not-for-profit or public entities as specified in the #guidelines#.
  - (4) For a period of time specified in the #guidelines#, the #administering agent# shall maintain all records setting forth the facts that form the basis of any affidavit submitted to #HPD#. The #administering agent# shall maintain such records, and such other records as #HPD# may require, at the offices of the #administering agent# or at such other location as may be approved by #HPD#. The #administering agent# shall make such records, and all facets of the operations of the #administering agent#, available for inspection and audit by #HPD# upon request.

(f) #Regulatory agreement#

The following provisions shall apply to #generating sites#.

- (1) The #regulatory agreement# shall require compliance with and shall incorporate by reference the #affordable housing plan# and the applicable provisions of this

Zoning Resolution and the #guidelines# and shall contain such additional terms and conditions as #HPD# deems necessary.

- (2) The #regulatory agreement# shall require that #HPD# be provided with documentation indicating the amount of #affordable floor area#. For #new construction affordable housing# or #substantial rehabilitation affordable housing#, such documentation shall include, but shall not be limited to, plans meeting the requirements of Section 23-94, paragraph (c).
- (3) The #regulatory agreement# shall be recorded against all tax lots comprising the portion of the #zoning lot# within which the #generating site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #affordable housing plan# for the entire #regulatory period#.
- (4) #Affordable housing# may serve to secure debt with the prior approval of #HPD#. Any lien securing such debt shall be subordinated to the #regulatory agreement#.
- (5) The #regulatory agreement# may, but shall not be required to, provide that such #regulatory agreement# may be terminated prior to the issuance of a temporary or permanent certificate of occupancy for any #compensated development# by the Department of Buildings.
- (6) Where all of the #dwelling units#, #rooming units# or #supportive housing units# in a #generating site#, other than any #super's unit#, are #affordable housing units#, the #regulatory agreement# shall provide that, following a default and any applicable opportunity to cure, #HPD# may, in addition to any other remedies provided therein or by applicable law:
  - (i) appoint a receiver to manage such #generating site#; or
  - (ii) take control of the board of directors of any housing development fund company or not-for-profit corporation that owns, controls or operates such #generating site#.
- (7) Where applicable in accordance with paragraph (b), (Monthly rent), of Section 23-961, the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

For #MIH sites#, the following provisions shall apply:

- (1) The #regulatory agreement# shall require compliance with and shall incorporate by reference the #MIH application# and the applicable provisions of this Zoning Resolution and the #guidelines# and shall contain such additional terms and conditions as #HPD# deems necessary.

- (2) The #regulatory agreement# shall require that #HPD# be provided with documentation indicating the amount of #affordable floor area#. For #new construction affordable housing# such documentation shall include, but shall not be limited to, plans meeting the requirements of Section 23-94, paragraph (c).
- (3) The #regulatory agreement# shall be recorded against all tax lots comprising the portion of the #zoning lot# within which the #MIH site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #MIH application# for the entire #regulatory period#.
- (4) Where applicable in accordance with paragraph (b), (Monthly rent), of Section 23-961, the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

(g) Housing standards

Upon the date that #HPD# issues the #completion notice#, the #generating site# or #MIH site# shall be entirely free of violations of record issued by any City or State agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and this Zoning Resolution, except as may be otherwise provided in the #guidelines# with respect to non-hazardous violations in occupied #affordable housing units# of #preservation affordable housing# or #substantial rehabilitation affordable housing#.

(h) Insurance

The #affordable housing# in a #generating site# or #MIH site# shall at all times be insured against any damage or destruction in an amount not less than the replacement value of such #affordable housing#. Any insurance proceeds resulting from damage or destruction of all or part of the #generating site# or #MIH site# containing such #affordable housing# shall be used first to restore any damaged or destroyed #affordable housing#, except that #HPD# may provide priority for lenders participating in the financing of #affordable housing# that is assisted under City, State or Federal programs.

(i) Duration of obligations

The obligation to provide and maintain a specified amount of #affordable housing# on a #generating site# or #MIH site# shall run with the #zoning lot# containing such #generating site# or #MIH site# for not less than the #regulatory period#. If any portion of such #affordable housing# is damaged or destroyed, no #floor area# shall be #developed#, reconstructed or repaired on such #zoning lot#, and no #development#, #enlargement#, extension or change of #use# shall occur on such #zoning lot#, unless

- (1) the amount of such #floor area# devoted to #affordable housing# is not less than the #floor area# of the #affordable housing# that was damaged or destroyed; or

- (2) 100 percent of such #developed#, reconstructed or repaired #floor area# is #affordable housing#.
- (j) One #generating site# or #MIH site# may satisfy requirements for multiple #compensated zoning lots# or #MIH zoning lots#, as applicable.
- Any #generating site# or #MIH site# may contain #affordable housing# that satisfies the requirements of Section 23-90, inclusive, for more than one #compensated development# or #MIH development#, as applicable, provided that no #affordable floor area# shall be counted more than once in determining the amount of #floor area compensation# for such #compensated developments# or in satisfying the #floor area# provisions for #zoning lots# in paragraph (d) of Section 23-154 (Inclusionary Housing).
- (k) #Guidelines#
- #HPD# shall adopt and may modify #guidelines# for the implementation of the provisions of Section 23-90, inclusive.

## **23-961**

### **Additional requirements for rental affordable housing**

The additional requirements of this Section shall apply to rental #affordable housing# on a #generating site# or #MIH site# for the entire #regulatory period#.

- (a) Tenant selection
- (1) Upon #rent-up# and any subsequent vacancy for the entire #regulatory period#, #affordable housing units# shall only be leased to and occupied by #low income households#, #moderate income households# and #middle income households#, as applicable for #generating sites#, or to #qualifying households#, as applicable, for #MIH sites#. No lease or sublease of an #affordable housing unit# shall be executed, and no tenant or subtenant shall commence occupancy of an #affordable housing unit#, without the prior approval of the #administering agent#.
- (2) A tenant may, with the prior approval of the #administering agent#, sublet an #affordable housing unit# for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the #monthly rent# that could be charged to the sublessor in accordance with the #regulatory agreement#.
- (3) A #low income household# or #qualifying household# may rent an #affordable housing unit# that is restricted to occupancy by #moderate income# or #middle

income households# or by #qualifying households# of higher income levels, provided that the #administering agent# determines that such #low income household# or #qualifying household# is able to utilize rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, to afford the applicable #monthly rent#.

(b) Monthly rent

- (1) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, The #regulatory agreement# shall provide that each #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD# within 60 days following the #rent-up date# and shall thereafter remain subject to #rent stabilization# for the entire #regulatory period# and thereafter until vacancy. However, the #regulatory agreement# may permit an alternative date by which any #affordable housing units# that are vacant on the #rent-up date# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD#.
  - (i) However, any #affordable housing unit# of #preservation affordable housing# or #substantial rehabilitation affordable housing# that is both occupied by a #grandfathered tenant# and subject to the Emergency Housing Rent Control Law on the #regulatory agreement date# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy following the #regulatory agreement date# and shall thereafter be subject to #rent stabilization# as provided herein.
  - (ii) The #regulatory agreement# shall provide that upon each annual registration of an #affordable housing unit# with the Division of Housing and Community Renewal, the #legal regulated rent# for such #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at an amount not exceeding the #maximum monthly rent#. However, the #regulatory agreement# shall provide that this requirement shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant# until the first vacancy after the #regulatory agreement date#.
- (2) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, The #regulatory agreement# shall provide that the #monthly rent# charged to the tenant of any #affordable housing unit# at #initial occupancy# and in each subsequent renewal lease shall not exceed the lesser of the #maximum monthly rent# or the #legal regulated rent#. However, the #regulatory agreement# shall provide that these requirements shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant#, until the first vacancy after the #regulatory agreement date#.

However, for #supportive housing units# or #affordable independent residences for seniors# on #MIH sites#, the #monthly rent# may exceed the #maximum monthly rent#, provided that it does not exceed the HUD Fair Market Rent for such unit, and that the #monthly rent#, less rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, does not exceed the lesser of the #maximum monthly rent# or the #legal regulated rent#.

- (3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that the #monthly rent# registered and charged for each #affordable housing unit# complied with the applicable #monthly rent# requirements at the time of #initial occupancy#.
- (4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each lease or sublease of an #affordable housing unit# or renewal thereof during the preceding year complied with the applicable #monthly rent# requirements at the time of execution of the lease or sublease or renewal thereof.
- (5) For any #affordable housing unit# subject to #rent stabilization#, the applicable ~~The~~ #regulatory agreement# shall provide that the lessor of an #affordable housing unit# shall not utilize any exemption or exclusion from any requirement of #rent stabilization# to which such lessor might otherwise be or become entitled with respect to such #affordable housing unit#, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of #rent stabilization#, due to:
  - (i) the vacancy of a unit where the #legal regulated rent# exceeds a prescribed maximum amount;
  - (ii) the fact that tenant income or the #legal regulated rent# exceeds prescribed maximum amounts;
  - (iii) the nature of the tenant; or
  - (iv) any other reason.
- (6) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, ~~The~~ #regulatory agreement# and each lease of an #affordable housing unit# shall contractually require the lessor of each #affordable housing unit# to grant all tenants the same rights that they would be entitled to under #rent stabilization# without regard to whether such #affordable housing unit# is statutorily subject to #rent stabilization#. If any court declares that #rent stabilization# is statutorily inapplicable to an #affordable housing unit#, such contractual rights shall thereafter continue in effect for the remainder of the #regulatory period#.

- (7) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, the #regulatory agreement# shall provide that each #affordable housing unit# that is occupied by a tenant at the end of the #regulatory period# shall thereafter remain subject to #rent stabilization# for not less than the period of time that such tenant continues to occupy such #affordable housing unit#, except that any occupied #affordable housing unit# that is subject to the Emergency Housing Rent Control Law at the end of the #regulatory period# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy.

(c) Income

- (1) Each #affordable housing unit# on a #generating site# shall be leased to and occupied by #low income households#, #moderate income households# or #middle income households#, as applicable, for the entire #regulatory period#. Each #affordable housing unit# on an #MIH site# shall be leased to and occupied by #qualifying households# for the entire #regulatory period#.
- (2) The #administering agent# shall verify the #household# income of the proposed tenant prior to leasing any vacant #affordable housing unit# in order to ensure that it is a #low income household#, #moderate income household#, #middle income household#, or #qualifying household#, as applicable.
- (3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# occupying an #affordable housing unit# complied with the applicable income eligibility requirements at the time of #initial occupancy#.
- (4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# that commenced occupancy of a vacant #affordable housing unit# during the preceding year, and each #household# that subleased an #affordable housing unit# during the preceding year, complied with the applicable income eligibility requirements at the time of #initial occupancy#.

(d) #Affordable housing plan# and #MIH application#

The following shall apply to #affordable housing plans#:

- (1) An #affordable housing plan# shall designate the initial #administering agent#, include the agreement with the initial #administering agent#, state how #administering agents# may be removed, state how a new #administering agent# may be selected upon the removal or other departure of any #administering agent#, include the building plans, state the number and bedroom mix of the

#affordable housing units# to be #developed#, rehabilitated or preserved, indicate how tenants will be selected at #rent-up# and upon each subsequent vacancy of an #affordable housing unit#, indicate how the #household# income of each prospective tenant will be verified prior to such #household#'s #initial occupancy# of an #affordable housing unit# and include such additional information as #HPD# deems necessary.

- (2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #affordable housing# in accordance with Section 23-90 (INCLUSIONARY HOUSING), inclusive, including that:
  - (i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;
  - (ii) #affordable housing units# will be leased to eligible #households# by a responsible #administering agent# at #rent-up# and upon each subsequent vacancy; and
  - (iii) tenants will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.
- (3) A copy of any proposed #affordable housing plan# shall be delivered to the affected Community Board, which may review such proposal and submit comments to #HPD#. #HPD# shall not approve a proposed #affordable housing plan# until the earlier of:
  - (i) the date that the affected Community Board submits comments regarding such proposal to #HPD# or informs #HPD# that such Community Board has no comments; or
  - (ii) 45 days from the date that such proposal was submitted to the affected Community Board.

The following shall apply to #MIH applications#:

- (1) An #MIH application# shall designate the initial #administering agent#, where applicable, and include the building plans, state the number, bedroom mix and #monthly rents# of the #affordable housing units# to be #developed# or #converted#, and include such additional information as #HPD# deems necessary to ensure the satisfaction of the requirements of Section 23-90, inclusive.
  - (2) A copy of any #MIH application# shall be delivered, concurrently with its submission to #HPD#, to the affected Community Board.
- (e) Special requirements for rental #preservation affordable housing#



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The additional requirements of this paragraph (e), shall apply to rental #preservation affordable housing#:

- (1) all of the #dwelling units#, #rooming units# and #supportive housing units# in the #generating site#, other than any #super's unit#, shall be #affordable housing units# that are leased to and occupied by #low income households# for the entire #regulatory period#;
  - (2) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
  - (3) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
  - (4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#;
  - (5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and
  - (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.
- (f) Special requirements for rental #substantial rehabilitation affordable housing#

The additional requirements of this paragraph, (f), shall apply to rental #substantial rehabilitation affordable housing#:

- (1) such #affordable housing# shall be created through the rehabilitation of a #generating site# at a cost per completed #affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;
- (2) on the #regulatory agreement date#, the average of the #legal regulated rents# for

all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

- (3) on the #regulatory agreement date#, #HPD# shall have determined that the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#;
- (5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and
- (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

23-962

#### **Additional requirements for homeownership affordable housing**

The additional requirements of this Section shall apply to #homeownership affordable housing# on a #generating site# or #MIH site# for the entire #regulatory period#.

##### **(a) Homeowner selection**

- (1) Upon #sale#, #homeownership affordable housing units# shall only be occupied by #eligible buyers# that are #low income households#, #moderate income households#, and #middle income households# or, for #MIH sites#, #qualifying households#, as applicable. Upon any subsequent #resale# for the entire #regulatory period#, #homeownership affordable housing units# shall be sold to and occupied by #eligible buyers# at or below the #maximum resale price# on the #sale date#, as applicable. No #homeownership affordable housing unit# shall be sold to or occupied by any #household# or any other person without the prior

approval of the #administering agent#.

- (2) A #homeowner# may, with the prior approval of the #administering agent#, sublet an #homeownership affordable housing unit# to another #low income household#, #moderate income household#, #middle income household#, or #eligible buyer# or, for #MIH sites#, #qualifying household#, as applicable, for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes paid by the sublessor.
- (3) A #homeowner# shall reside in the #homeownership affordable housing unit#, except as provided in paragraph (a)(2) of this Section.
- (4) The restrictions in this paragraph, (a), on the ownership of #homeownership affordable housing units# shall not prevent the exercise of a valid lien by a #mortgage# lender, #cooperative corporation#, #condominium association# or any other entity authorized by the #regulatory agreement# to take possession of a #homeownership affordable housing unit# in the event of default by the #homeowner#. However, any #sale# or #resale# by such lien holder shall be to an #eligible buyer#, in accordance with this paragraph, (a), and the #guidelines#.

(b) Price

- (1) The #initial price# or #maximum resale price# of any #homeownership affordable housing unit# shall be set assuming a #mortgage#, as defined in Section 23-913 (Definitions applying to homeownership generating sites).
- (2) The #regulatory agreement# shall establish the #initial price# for each #homeownership affordable housing unit#. #HPD# shall set the #initial price# to ensure that the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid directly by the #homeowner# will not exceed 30 percent of the #low income limit#, #moderate income limit# or #middle income limit#, as applicable. For #MIH sites#, #HPD# shall establish the #initial price# based on the incomes of #qualifying households# in accordance with the #guidelines#.
- (3) Prior to any #resale# of a #homeownership affordable housing unit#, the #administering agent# shall set the #maximum resale price# for such #homeownership affordable housing unit#.
- (4) The #administering agent# shall not approve any #resale# unless the selected #eligible buyer# provides a #down payment#, as specified in the #guidelines#.
- (5) A #homeownership affordable housing unit#, or any shares in a #cooperative

corporation# appurtenant thereto, shall not secure any debt unless such debt is a #mortgage# that has been approved by the #administering agent#.

(c) Income

- (1) The #administering agent# shall verify the #household# income of a proposed #homeowner#, in accordance with the #guidelines#, prior to the #sale date# of any #homeownership affordable housing unit# in order to ensure that, upon #sale#, it is a #low income household#, #moderate income household#, ~~or~~ #middle income household# or, for #MIH sites#, #qualifying household#, as applicable, and that upon #resale#, it is to an #eligible buyer#.
- (2) The #administering agent# shall meet reporting requirements on each #sale# and #resale#, as set forth in the #guidelines#.
- (3) Each year after the #commencement date#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #resale# of a #homeownership affordable housing unit# during the preceding year complied with all applicable requirements on the #resale date#.

(d) #Affordable housing plan# and #MIH application#

The following shall apply to #affordable housing plans#:

- (1) An #affordable housing plan# shall include the building plans, state the number and bedroom mix of the #homeownership affordable housing units# to be #developed#, rehabilitated or preserved, indicate how #homeowners# will be selected upon each #sale# or #resale# of a #homeownership affordable housing unit#, indicate how the #household# income of #eligible buyers# will be verified prior to such #household's initial occupancy# of a #homeownership affordable housing unit# and include such additional information as #HPD# deems necessary.
- (2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #homeownership affordable housing#, including that:
  - (i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;
  - (ii) #affordable housing units# will be sold under the supervision of a responsible #administering agent# to #eligible buyers# at each #sale# and #resale#; and
  - (iii) #homeowners# will be selected in an equitable manner in accordance with

laws prohibiting discrimination and all other applicable laws.

- (3) The requirements of Section 23-961, paragraph (d)(3), shall apply.

The following shall apply to #MIH applications#:

- (1) An #MIH application# shall include the building plans; state the number and bedroom mix of the #homeownership affordable housing units# to be #developed# or #converted#, and the #initial price# of each #homeownership affordable housing unit#; and include such additional information as #HPD# deems necessary to ensure the satisfaction of the requirements of Section 23-90, inclusive.
- (2) A copy of any #MIH application# shall be delivered, concurrently with its submission to #HPD#, to the affected Community Board.

- (e) Housing standards

The requirements of Section 23-96, paragraph (g), shall apply. In addition, each #homeowner# shall be obligated to maintain each #homeownership affordable housing unit# in accordance with minimum quality standards set forth in the #guidelines#. Prior to any #resale#, #HPD#, or its designee as specified in the #guidelines#, shall inspect the #affordable housing unit# and shall either require the #homeowner# to remedy any condition that violates such minimum quality standards before the #sale date#, or require the retention of a portion of the #resale# proceeds to pay the cost of remedying such condition.

- (f) Optional provisions for certain #new construction homeownership affordable housing#

In Community District 3, Borough of Manhattan, #HPD# may modify the requirements for #new construction homeownership affordable housing# to facilitate #development# on a site that has been disposed of pursuant to Article 16 of the General Municipal Law as set forth in this paragraph (f), inclusive.

- (1) #HPD# may permit a #household# to occupy a #new construction homeownership affordable housing unit# as rental #affordable housing# if:
- (i) no more than 120 days prior to the #regulatory agreement date#, such #household# occupied a #dwelling unit# or #rooming unit# in a #building# located on the #zoning lot# of such #new construction homeownership affordable housing#, pursuant to a lease or occupancy agreement to which one or more members of such #household# was a party or pursuant to a statutory tenancy;
- (ii) no more than 120 days prior to the #regulatory agreement date#, the average rent for all occupied #dwelling units# or #rooming units# in such

#building# did not exceed 30 percent of the #low income limit# divided by 12; and

(iii) after the #regulatory agreement date#, such #building# is demolished and replaced with #new construction homeownership affordable housing#.

- (2) #HPD# may permit a #household# that is not an #eligible buyer#, but that meets the requirements of paragraph (f)(1) of this Section, to purchase a #new construction homeownership affordable housing unit# at #sale#, provided that such #household# is a #low income household#, #moderate income household# or #middle income household#, as applicable.

Where a #new construction homeownership affordable housing unit# is purchased at a nominal price, the #appreciated price# for such #homeownership affordable housing unit# shall be the product of the #initial price# of such #homeownership affordable housing unit# and the #appreciation index# applicable at #resale# as specified in the #guidelines#.

- (g) Special requirements for #homeownership preservation affordable housing#

The additional requirements in this paragraph, ~~(f)~~(g), shall apply to #homeownership preservation affordable housing#:

- (1) on the #regulatory agreement date#, the #generating site# shall be an existing #building# containing #residences#;
- (2) on the #regulatory agreement date#, the average of the #legal regulated rents#, as such term is defined in Section 23-912, for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
- (3) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 (Additional requirements for rental affordable housing) until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;
- (4) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (5) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the

#regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and

- (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(h) Special requirements for #homeownership substantial rehabilitation affordable housing#

The additional requirements in this paragraph, ~~(g)~~(h), shall apply to #homeownership substantial rehabilitation affordable housing#:

- (1) on the #regulatory agreement date#, the #generating site# or #MIH site# shall be an existing #building#;
- (2) such #affordable housing# shall be created through the rehabilitation of such existing #building# at a cost per completed #homeownership affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;
- (3) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
- (4) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;
- (5) on the #regulatory agreement date#, #HPD# shall have determined that the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (6) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and

- (7) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

\* \* \*

**62-80**  
**SPECIAL REVIEW PROVISIONS**

\* \* \*

**62-83**  
**Special Permits by the City Planning Commission**

**62-831**  
**General Provisions**

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions). However, where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed #development#, #enlargement# or #conversion#, the Commission may modify the requirements of such paragraph (d).

**~~62-831~~ 832**  
**Docks for passenger ocean vessels in C6 Districts**

\* \* \*

**~~62-832~~ 833**  
**Docks for ferries or water taxis in Residence Districts**

\* \* \*

**~~62-833~~ 834**  
**Uses on floating structures**

\* \* \*



**62-834 835**

**Developments on piers or platforms**

\* \* \*

**62-835 836**

**Public parking facilities on waterfront blocks**

\* \* \*

**62-836 837**

**Bulk modifications on waterfront blocks**

\* \* \*

**62-837-838**

**Docks for gambling vessels**

\* \* \*

**73-624**

**Reduction or modification of Mandatory Inclusionary Housing requirements**

The Board of Standards and Appeals may permit a reduction in the amount of #affordable floor area# required on an #MIH zoning lot# or modify the income levels specified for #qualifying households# pursuant to paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154 (Inclusionary Housing), or reduce the amount of a payment into the #affordable housing fund# required pursuant to paragraph (d)(3)(iv) of Section 23-154, provided that:

- (a) such requirements for #affordable housing# create an unnecessary hardship, with no reasonable possibility that a #development#, #enlargement#, or #conversion# on the #zoning lot# in strict compliance with the provisions of Section 23-90 (Inclusionary Housing), inclusive, will bring a reasonable return, and that a reduction or modification of these requirements is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#;
- (b) the unnecessary hardship claimed as a basis for such reduction or modification has not been created by the owner or by a predecessor in title; and
- (c) within the intent and purposes of Section 23-90 (Inclusionary Housing), the reduction or modification is the minimum necessary to afford relief.

\* \* \*

## **74-00**

### **POWERS OF THE CITY PLANNING COMMISSION**

## **74-01**

### **General Provisions**

\* \* \*

In addition, the Commission, with the concurrence of the Board of Estimate, shall also have the power to permit the renewal of an exception or permit issued prior to December 15, 1961, in accordance with the provisions of Section 11-41 relating to Exceptions, Variances or Permits Previously Authorized.

In all Special Purpose Districts, the provisions of 23-934 (Special permit approval in Special Purpose Districts), with respect to special permits that modify #use# or bulk#, shall apply. In the #Special Midtown District#, the powers of the Commission to permit special permit #uses# are modified by the provisions of Section 81-13 (Special Permit Use Modifications), and the powers of the Commission to permit modification of the #bulk# regulations or grant bonus #floor area# for certain amenities are made inapplicable or modified in accordance with the provisions of Section 81-062 (Applicability of Chapter 4 of Article VII).

\* \* \*

## **74-30**

### **SPECIAL PERMIT USES AND BULK MODIFICATIONS**

## **74-31**

### **General Provisions for Special Permit Uses**

The City Planning Commission shall have the power to permit in the districts indicated, the special permit #uses# set forth in this Chapter and to prescribe appropriate conditions and safeguards thereon, provided that in each specific case:

\* \* \*

## **74-32**

### **Additional Considerations for Special Permit Use and Bulk Modifications**

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the

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Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions). However, where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed #development#, #enlargement# or #conversion#, the Commission may modify the requirements of such paragraph (d).

\* \* \* END \* \* \*