



Zoning Resolution

THE CITY OF NEW YORK

Eric Adams, Mayor

CITY PLANNING COMMISSION

Daniel R. Garodnick, Chair

23-90 - INCLUSIONARY HOUSING

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23-90 - INCLUSIONARY HOUSING

LAST AMENDED

23-91 - Definitions

LAST AMENDED

7/29/2009

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

LAST AMENDED

3/22/2016

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

With respect to the requirements of paragraph (d)(3)(v) of Section [23-154](#), 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 use within the borough in which the #MIH development# making such contribution is located, and for a minimum of 10 years, shall be reserved for use in the same Community District in which the #MIH development# making such contribution is located. #HPD# shall issue a public report on the use of such fund no less frequently than on an annual basis.

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), either #low income households# or a combination of #low income households# and #moderate income households# or #middle income

households#;

(3) upon #resale# of #homeownership affordable housing units#, other #eligible buyers#, as applicable; or

(4) #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 “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](#) (Floor area increase), 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 Sections [23-154](#) and [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 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 Sections [23-154](#) and [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)(iv) or (d)(5) 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 or 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 bands# shall all be multiples of 10 percent of the #income index#, except for an #income band# at 135 percent of the #income index# provided pursuant to paragraph (d)(3)(iv) of Section [23-154](#) (Inclusionary Housing).

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#.

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](#), for #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

An “MIH development” is a #development#, #enlargement# or #conversion# that complies with the provisions of paragraphs (d) (3)(i) through (d)(3)(v) or (d)(5) of Section [23-154](#) (Inclusionary Housing), or provides #affordable housing# or a contribution to the #affordable housing fund# pursuant to such provisions as modified by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements).

MIH site

An “MIH site” is a #building# containing #affordable floor area# that satisfies either the special #floor area# provisions for #zoning lots# in #Mandatory Inclusionary Housing areas# in paragraphs (d)(3)(i) through (d)(3)(iv) and (d)(5), as applicable, of Section [23-154](#) (Inclusionary Housing) for an #MIH development# in a #Mandatory Inclusionary Housing area#, or such provisions as modified by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements).

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)(iv) or (d)(5) 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#, a “permit notice” is a notice from #HPD# to the Department of Buildings stating that building permits may be issued 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), or any modification of such provisions by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements). 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)(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

A “qualifying household” is a #low income household#, #moderate income household# or #middle income household# that satisfies the applicable #income band# requirements of paragraphs (d)(3)(i) through (d)(3)(iv) or (d)(5) of Section [23-154](#) (Inclusionary Housing) or as provided by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements).

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 #Mandatory Inclusionary Housing areas# in paragraph (d) of Section [23-154](#) (Inclusionary Housing) for an #MIH development# or any modification of such provisions by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements), 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 (g) (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

LAST AMENDED

3/22/2016

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

Legal regulated rent

A “legal regulated rent” is, with respect to any #affordable housing unit#, 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, with respect to the requirements of paragraphs (d)(3)(i) through (d)(3)(iv) or (d)(5) of Section [23-154](#) (Inclusionary Housing), 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](#) 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#, #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#, #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 #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 a #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

LAST AMENDED

3/22/2016

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

LAST AMENDED

7/29/2009

23-931 - Lower income housing plans approved prior to July 29, 2009

LAST AMENDED

3/22/2016

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 [23-953](#) (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 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

LAST AMENDED

3/22/2016

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](#), as applicable.

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

LAST AMENDED

3/22/2016

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

LAST AMENDED 3/22/2016

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

LAST AMENDED

3/22/2016

(a) Except for #MIH developments#, #affordable housing# shall be either #new construction affordable housing#,

#substantial rehabilitation affordable housing# or #preservation affordable housing#. For #MIH developments#, #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 band# in an #MIH site# shall be determined by the same method 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

LAST AMENDED
3/22/2016

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).

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) 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](#), 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 R9 Districts without a letter or number 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).
- (b) In R6 through 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, except that towers shall not be permitted in an R9-1 District. In addition, for R9 Districts without a letter or number suffix 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).

23-953 - 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# or contribution to the #affordable housing fund# 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) or any modification of such provisions by special permit of the Board of Standards and Appeals pursuant to Section [73-624](#) (Reduction or modification of Mandatory Inclusionary Housing requirements). 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

LAST AMENDED
3/22/2016

#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 #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 #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 65 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 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 independent residences 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 average size of #affordable housing units# of a particular bedroom count shall be not less than either the average size of #dwelling units# that are not #affordable housing units# with the same number

of bedrooms, or the minimum size specified above for a #dwelling unit# of a particular bedroom count, whichever is less.

However, these unit size requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#. #HPD# may also waive such 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#.

For an #MIH site#, #HPD# may specify the method of measuring #floor area# within #affordable housing units# in the #guidelines#, compliant with Department of Buildings practice; and

- (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# 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 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#, an #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 paragraph (c) of Section [23-94](#);
- (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; and
- (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:
- (8) 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.
- (9) 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 paragraph (c) of Section [23-94](#).
- (10) 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#.
- (11) 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

LAST AMENDED
3/22/2016

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 #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# :

- (4) 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.
- (5) 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#

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

LAST AMENDED

3/22/2016

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#, #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 a #homeownership affordable housing unit# to another #low income household#, #moderate income household#, #middle income household#, #eligible buyer# or, for #MIH sites#, #qualifying households#, 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#, #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# :

- (4) 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.
- (5) 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 (g), 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 (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 (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#.