



## Zoning Resolution

THE CITY OF NEW YORK

Eric Adams, Mayor

CITY PLANNING COMMISSION

Daniel R. Garodnick, Chair

# **23-911 - General definitions**

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## 23-911 - General definitions

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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#.