23-96 - Requirements
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
(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#.
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;

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;

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;

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

such affordable housing shall comply with such additional criteria as may be specified by HPD in the guidelines.

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#;

(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.