Mandatory Inclusionary Housing
2/3/16

CITY WIDE

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York to create a Mandatory Inclusionary Housing program that would require, through zoning actions, a share of new housing to be permanently affordable.

Matter in underline is new, to be added;
Matter in strikeout is old, to be deleted;
Matter within # # is defined in Section 12-10 and Section 23-91, inclusive;
*** indicates where unchanged text appears in the Zoning Resolution

[NOTE: Cross-references to Sections and Section titles may reflect the proposed text amendment, Zoning for Quality and Affordability (ZQA – ULURP No. N 160049 ZRY). Sections 23-154, paragraphs (a) through (c), and 23-664, paragraphs (a)(1) through (a)(3), are provided for information purposes and are part of ZQA. Sections 23-154, paragraph (d) and 23-664, paragraph (a)(4), are proposed in this MIH Zoning Text Amendment.]

ARTICLE I
GENERAL PROVISIONS

Chapter 2
Construction of Language and Definitions

          *   *   *

12-10
DEFINITIONS

          *   *   *

Incidental alteration – see Alteration, incidental

Inclusionary Housing area, Mandatory – see Mandatory Inclusionary Housing area
Inclusionary Housing designated area

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

* * *

Lower density growth management area

* * *

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

Mandatory Inclusionary Housing area

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

Manhattan Core

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

* * *

23-154
Inclusionary Housing

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

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

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

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

<table>
<thead>
<tr>
<th>OPTIONS</th>
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<tbody>
<tr>
<td>Without #public funding#</td>
<td>#New construction affordable housing# or</td>
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<td></td>
<td>#preservation affordable housing#</td>
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</table>

(b) #Inclusionary Housing designated areas#

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

Maximum #Residential Floor Area Ratio#
<table>
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<tr>
<th>District</th>
<th>Base #floor area ratio #</th>
<th>Maximum #floor area ratio #</th>
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</thead>
<tbody>
<tr>
<td>R6B</td>
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<td>R6¹</td>
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<td>R6² R6A R7-2¹</td>
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<tr>
<td>R7A R7-2²</td>
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<td>7.3</td>
<td>9.70</td>
</tr>
<tr>
<td>R10</td>
<td>9.00</td>
<td>12.00</td>
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¹ for #zoning lots#, or portions thereof, beyond 100 feet of a #wide street#

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

(c) Special provisions for specified #Inclusionary Housing designated areas#

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

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

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

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

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

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

(i) For #zoning lots#, or portions thereof, that are located within R6B, R7A or R7-3 Districts, the base #floor area ratio# set forth in paragraph (b) of this Section shall not apply. No #residential development# or #enlargement# shall be permitted unless #affordable floor area# is provided pursuant to the provisions of this paragraph. The amount of #low-income floor area# provided shall equal no less than 10 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store# and the amount of #moderate-income floor area# provided shall equal no less than 15 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store#. For the purposes of this paragraph (c)(2)(i), inclusive, #low income floor area# may be considered #moderate income floor area#; and
(ii) The amount of affordable floor area utilizing public funding that may count toward satisfying the affordable floor area required in paragraph (c)(2)(i) of this Section shall be determined in accordance with procedures prescribed by the City Planning Commission pursuant to the provisions of Section 74-743 (Special provisions for bulk modification).

(3) Special provisions for compensated zoning lots

Special provisions shall apply to compensated zoning lots located within:

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

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

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

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

(1) Except where permitted by special permit of the Board of Standards and Appeals pursuant to Section 73-624 (Reduction or modification of Mandatory Inclusionary Housing requirements), or as provided in paragraph (d)(4) of this Section 23-154, no residential development, enlargement, or conversion from non-residential to residential use shall be permitted unless affordable housing, as defined in Section 23-911 (General definitions) is provided or a contribution is made to the affordable housing fund, as defined in Section 23-911, pursuant to the provisions set forth in paragraph (d)(3)(i) through (d)(3)(iv) of this Section, inclusive.

(2) Except in R7-3 or R7X districts, the maximum floor area ratio for the applicable zoning district in Inclusionary Housing designated areas set forth in paragraph (b) of this Section shall apply to any development, enlargement or conversion from non-residential to residential use that complies with the requirements set forth in paragraph (d)(3) of this Section or to any MIH site for which a reduction or modification of such requirements is permitted by special permit of the Board of Standards and Appeals pursuant to Section 73-624 (Reduction or modification of Mandatory Inclusionary Housing requirements). In an R7-3 or R7X district, the maximum floor area ratio shall be 6.0 for any development, enlargement, conversion or MIH site as specified in this paragraph (d) (2).
In addition, in R6, R7-1, R7-2, R8 and R9 Districts without a letter suffix, where
the basic height and setback requirements are utilized pursuant to paragraph (c) of
Section 23-952, the maximum #floor area ratio# shall be determined in
accordance with the provisions of Section 23-151 (Basic regulations for R6
through R9 Districts).

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

(i) In #Mandatory Inclusionary Housing areas# where Option 1 applies, as set
forth in Appendix F, an amount of #affordable floor area# for #qualifying
households# shall be provided that is equal to at least 25 percent of the
#residential floor area# within such #development#, #enlargement#, or
#conversion# from non-#residential# to #residential use#. The weighted
average of all #income bands# for #affordable housing units# shall not
exceed 60 percent of the #income index#, and no #income band# shall
exceed 130 percent of the #income index#.

(ii) In #Mandatory Inclusionary Housing areas# where Option 2 applies, as set
forth in Appendix F, an amount of #affordable floor area# for #qualifying
households# shall be provided that is equal to at least 30 percent of the
#residential floor area# within such #development#, #enlargement#, or
#conversion# from non-#residential# to #residential use#. The weighted
average of all #income bands# for #affordable housing units# shall not
exceed 80 percent of the #income index#, and no #income band# shall
exceed 130 percent of the #income index#.

(iii) In #Mandatory Inclusionary Housing areas# where the Workforce Option
applies, as set forth in Appendix F, as an alternative to Option 1 or Option
2, an amount of #affordable floor area# may be provided for #qualifying
households# that is equal to at least 30 percent of the #residential floor
area# within such #development#, #enlargement#, or #conversion# from non-#residential# to #residential use#. The weighted average of all
#income bands# for #affordable housing units# shall not exceed 120
percent of the #income index#, and no #income band# shall exceed 130
percent of the #income index#. Such #development#, #enlargement#, or
#conversion# from non-#residential# to #residential use# may not utilize
except where HPD determines that such public funding is necessary to support affordable housing other than affordable floor area satisfying the requirements of this Section. However, the Workforce Option shall not be permitted to be utilized for any development, enlargement, or conversion from non-residential to residential use within the Manhattan Core.

(iv) A development, enlargement, or conversion from non-residential to residential use that increases the number of dwelling units by no more than 25, and increases residential floor area on the zoning lot by less than 25,000 square feet, may satisfy the requirements of this Section by making a contribution to the affordable housing fund. The amount of such contribution shall be related to the cost of constructing an equivalent amount of affordable floor area, as set forth in the guidelines.

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

(i) A single development, enlargement, or conversion from non-residential to residential use of not more than 10 dwelling units and not more than 12,500 square feet of residential floor area on a zoning lot that existed on the date of establishment of the applicable Mandatory Inclusionary Housing area; or

(ii) a development, enlargement, or conversion from non-residential to residential use containing no residences other than affordable independent residences for seniors.

*   *   *

23-664
Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors

R6 R7 R8 R9 R10

In the districts indicated, the provisions of this Section shall apply to Quality Housing buildings on zoning lots meeting the criteria set forth in paragraph (a) of this Section. For the purposes of this Section, defined terms include those set forth in Sections 12-10 and 23-911.

(a) Eligible buildings

The additional heights and number of stories permitted through this Section shall apply to:
(1) #buildings# on #zoning lots# where at least 20 percent of the #floor area# of the #zoning lot# contains #affordable independent residences for seniors#;

(2) #buildings# on #zoning lots# in R10 Districts outside of #Inclusionary Housing designated areas#, where:

(i) In accordance with the provisions of paragraph (a) of Section 23-154 (Inclusionary Housing), the #zoning lot# achieves a #floor area ratio# of at least 11.0; and

(ii) such #zoning lot# includes a #compensated development# that contains #affordable floor area#; or

(3) #buildings# on #zoning lots# in #Inclusionary Housing designated areas#, where:

(i) 50 percent or more of the #floor area# of the #zoning lot# contains #residential uses#; and

(ii) at least 20 percent of such #residential floor area# is #affordable floor area# provided in accordance with the provisions of paragraph (b) of Section 23-154.

(4) #buildings# on #MIH zoning lots# that contain #MIH sites#, where:

(i) such #buildings# contain #residential floor area# within a #development#, #enlargement# or #conversion# subsequent to the mapping of such #Mandatory Inclusionary Housing area#; and

(ii) such #zoning lot# contains all #affordable floor area# required for such #development#, #enlargement# or #conversion# to comply with the applicable options set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154, including any modification of such options by special permit of the Board of Standards and Appeals pursuant to Section 73-624 (Reduction or modification of Mandatory Inclusionary Housing requirements).

* * *

23-90
INCLUSIONARY HOUSING

23-91
Definitions
For the purposes of this Section, inclusive, matter in italics is defined either in Section 12-10 (DEFINITIONS) or in this Section.

23-911
General definitions

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

Administering agent

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

(a) each subject rental affordable housing unit is rented in compliance with such regulatory agreement at rent-up and upon each subsequent vacancy; or

(b) each subject homeownership affordable housing unit is owned and occupied in compliance with such regulatory agreement at sale and upon each resale.

Affordable floor area

(a) Where all of the dwelling units, rooming units and supportive housing units in a generating site or MIH site, other than any super’s unit, are affordable housing units, all of the residential floor area, or community facility floor area for a supportive housing project, in such generating site or MIH site is “affordable floor area.”

(b) Where one or more of the dwelling units or rooming units in a generating site, other than any super’s unit, are not affordable housing units, the affordable floor area in such generating site is the sum of:

(1) all of the residential floor area within the perimeter walls of the affordable housing units in such generating site, plus

(2) a figure determined by multiplying the residential floor area of the eligible common areas in such generating site by a fraction, the numerator of which is all of the residential floor area within the perimeter walls of the affordable housing units in such generating site and the denominator of which is the sum of the residential floor area within the perimeter walls of the affordable housing units in such generating site plus the residential floor area within the perimeter walls of the dwelling units or rooming units in such generating site.
affordable housing units.

(c) Where one or more of the dwelling units or rooming units in an MIH site, other than any super’s unit, are not affordable housing units, the affordable floor area in such MIH site is the sum of:

1. all of the residential floor area of the affordable housing units in such MIH site; plus

2. a figure determined by multiplying the residential floor area of the eligible common areas in such MIH site by a fraction, the numerator of which is all of the residential floor area of the affordable housing units in such MIH site and the denominator of which is the sum of the residential floor area of the affordable housing units in such MIH site plus the residential floor area of the dwelling units or rooming units in such MIH site, other than any super’s unit, that are not affordable housing units.

Affordable housing

“Affordable housing” consists of:

(a) affordable housing units; and

(b) eligible common areas.

Affordable housing fund

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

Affordable housing plan

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

An “affordable housing unit” is:

(a) a #dwelling unit#, other than a #super’s unit#, that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by:

(1) #low income households#;

(2) where permitted by paragraph (c) of Section 23-154 (Inclusionary Housing) 23-953 (Special floor area compensation provisions in specified areas), either #low income households# or a combination of #low income households# and #moderate income households# or #middle income households#; or

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

(4) in #Mandatory Inclusionary Housing areas#, #qualifying households#.

(b) a #rooming unit#, other than a #super’s unit#, that is used for class B occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by #low income households#; or

(c) a #supportive housing unit# within a #supportive housing project#.

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

Capital element

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

Compensated development

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

Compensated zoning lot

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

Completion notice

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

Eligible common area

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

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

Floor area compensation

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

Generating site

A “generating site” is a building or building segment containing either residential affordable floor area or a supportive housing project, which generates floor area compensation. Non-residential floor area on a generating site, other than a supportive housing project, may not generate floor area compensation.
A "generating site" may also be a "MIH site", provided that no "floor area" that satisfies the requirements of paragraphs (d)(3)(i) through (d)(3)(iii) of Section 23-154 (Inclusionary Housing) may also generate "floor area compensation".

**Grandfathered tenant**

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

(a) occupied an "affordable housing unit" in "preservation affordable housing" or "substantial rehabilitation affordable housing" on the "regulatory agreement date", pursuant to a lease, occupancy agreement or statutory tenancy under which one or more members of such "household" was a primary tenant of such "affordable housing unit"; and

(b) has not been certified by the "administering agent" to have an annual income below the "low income limit", "moderate income limit" or "middle income limit", as applicable to such "affordable housing unit"; or

(c) in "homeownership preservation affordable housing" or "homeownership substantial rehabilitation affordable housing", has been certified by the "administering agent" to have an annual income below the "low income limit", "moderate income limit" or "middle income limit", as applicable to such "affordable housing unit", but has elected not to purchase such "affordable housing unit".

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

**Guidelines**

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

In #Mandatory Inclusionary Housing areas#, an “MIH development” is a #development#, #enlargement#, or #conversion# that complies with the provisions of paragraphs (d)(3)(i)
through (d)(3)(iv) 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 MIH areas in paragraphs (d)(3)(i) through (d)(3)(iii), as applicable, of Section 23-154 (Inclusionary Housing) for an MIH development in a Mandatory Inclusionary Housing area, 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)(iii) of Section 23-154 may also generate floor area compensation.

**MIH zoning lot**

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

**Moderate income floor area**

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

**Moderate income household**

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

**Moderate income limit**

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

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

(a) is located in a building or portion thereof that did not exist on a date which is 36 months prior to the regulatory agreement date;

(b) is located in floor area for which the Department of Buildings first issued a temporary or permanent certificate of occupancy on or after the regulatory agreement date; and

(c) complies with such additional criteria as may be specified by HPD in the guidelines.

Permit notice

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

(a) state the amount of low income floor area, moderate income floor area or middle income floor area attributable to such generating site;

(b) state whether the affordable housing comprising such low income floor area, moderate income floor area or middle income floor area is new construction affordable housing, substantial rehabilitation affordable housing or preservation affordable housing;

(c) state whether the affordable housing comprising such low income floor area, moderate income floor area or middle income floor area has utilized public funding; and

(d) specify the amount of such affordable housing that the compensated development may utilize to generate floor area compensation.

For MIH developments, a permit notice is a notice from HPD to the Department of Buildings stating that building permits may be issued for any development, enlargement or conversion subject to the special floor area requirements of paragraph (d) of Section 23-154 (Inclusionary Housing), 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**

In a #Mandatory Inclusionary Housing area#, a “qualifying household” is a #low income household#, #moderate income household#, or #middle income household# with an income not exceeding the applicable #income band# as specified in paragraphs (d)(3)(i) through (d)(3)(iii) 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 #MIH 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**

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

**Supportive housing unit**

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

**Utility allowance**

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

23-913 Definitions applying to homeownership affordable housing

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

**Appreciated price**

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

**Appreciation cap**

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

(a) 125 percent of the income index for a homeownership affordable housing unit that was restricted to occupancy by low income households at sale; or

(b) 175 percent of the income index for a homeownership affordable housing unit that was restricted to occupancy by moderate income households at sale; or

(c) 200 percent of the income index for a homeownership affordable housing unit that was restricted to occupancy by middle income households at sale.

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

**Appreciation index**

The “appreciation index” is 100 until August 1, 2010. On or after August 1, 2010, the appreciation index shall be a number greater than 100, representing the cumulative increase in resale price of a homeownership affordable housing unit permitted pursuant to the annual rates of increase established by HPD.

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

Commencement date

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

Condominium association

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

Cooperative corporation

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

Down payment

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

Eligible buyer

An “eligible buyer” is a #household# that qualifies to buy a specific #homeownership affordable housing unit#. Such a #household# shall:
(a) except in the case of #succession#:

1. be, at the time of application for an initial #sale#, a #low income household#, #moderate income household#, or #middle income household# or #qualifying household# for which, at the #initial price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income. However, for a #household# that resided on a #generating site# or #MIH site# on the date of submission of an #affordable housing plan#, #HPD# may waive the requirement that housing costs be not less than 25 percent of such #household’s# income;

2. be, at the time of application for a #resale#, in the case of an #affordable housing unit# initially limited to #sale# to a #low income household#, #moderate income household#, or #middle income household#, or #qualifying household#, any #household# for which, at the #maximum resale price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income;

3. have cash or equivalent assets that are at least equal to the required #down payment# for such #affordable housing unit#. However, #HPD# may waive this requirement for a #household# that resided on a #generating site# or #MIH site# on the date of submission of an #affordable housing plan# to #HPD#; and

4. meet such additional eligibility requirements as may be specified in the #guidelines#.

(b) in the case of #succession#:

1. be, at the time of application, a #household# for which, at the #maximum resale price#, the combined cost of #monthly fees#, #imputed mortgage payments#, utilities and property taxes for the subject #homeownership affordable housing unit# is not less than 25 percent of such #household's# income; and

2. meet such additional eligibility requirements as may be specified in the #guidelines#.

A #grandfathered tenant# is not an #eligible buyer# unless such #grandfathered tenant# has been certified by the #administering agent# to have an annual income at or below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #homeownership affordable housing unit# or, for #MIH sites#, meets such qualifications for eligibility specified in the #guidelines#.

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

**Homeowner**

A “homeowner” is a person or persons who:

(a) owns a condominium #homeownership affordable housing unit# and occupies such condominium #homeownership affordable housing unit# in accordance with owner occupancy requirements set forth in the #guidelines#; or

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

**Homeownership**

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

**Imputed mortgage payment**

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

**Initial price**

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

**Maximum resale price**

The “maximum resale price” for a #homeownership affordable housing unit# is the lesser of the #appreciated price# or the #appreciation cap# for such #homeownership affordable housing unit#. 
Monthly fees

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

Mortgage

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

Mortgage payment

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

Resale

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

Sale

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

Sale date

A “sale date” is the date of the sale or resale of any homeownership affordable housing unit. However, for homeownership affordable housing units in preservation affordable housing or substantial rehabilitation affordable housing occupied by grandfathered tenants on the regulatory agreement date, the initial sale date shall be the regulatory agreement date.
Succession

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

23-92
General Provisions

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

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

23-93
Applicability

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

Any lower income housing plan, as defined by Section 23-93 prior to July 29, 2009, that has been approved by HPD prior to such date, and results, within one year after such approval, in the execution of a restrictive declaration pursuant to Section 23-95, paragraph (e), as such Section existed prior to July 29, 2009, shall be governed solely by the regulations in effect prior to July 29, 2009, unless a regulatory agreement with respect thereto specifically provides to the contrary. However, Section 23-9553 (Additional requirements for compensated developments and MIH developments) shall apply to any permits or certificates of occupancy for compensated developments issued on or after July 29, 2009.

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

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

23-932
R10 districts

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

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

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

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

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

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

23-934
Special permit approval in Special Purpose Districts

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

23-94
Methods of Providing Affordable Housing

(a) **Except in Mandatory Inclusionary Housing areas**, affordable housing shall be either new construction affordable housing, substantial rehabilitation affordable housing or preservation affordable housing. In Mandatory Inclusionary Housing areas, affordable housing shall be either new construction affordable housing or a conversion from non-residential to residential use. Such conversions shall comply with the requirements of Section 23-90, inclusive, applicable to new construction affordable housing.

(b) When determining whether affordable housing is new construction affordable housing, substantial rehabilitation affordable housing or preservation affordable housing in order to calculate floor area compensation, or when making a determination of which building or building segment constitutes a generating site, HPD may separately consider each building or building segment on a zoning lot. Where any such building consists of two or more contiguous sections separated by walls or other barriers, HPD may consider all relevant facts and circumstances when determining whether to consider the sections of such building separately or collectively, including, but not limited to, whether such sections share systems, utilities, entrances, common areas or other common elements and whether such sections have separate deeds, ownership, tax lots, certificates of occupancy, independent entrances, independent addresses or other evidence of independent functional use.

(c) The amount of affordable floor area in any generating site or MIH site shall be determined based upon plans for such generating site or MIH site which have been approved by the Department of Buildings and which indicate thereon the amount of floor area devoted to affordable housing and the amount of floor area devoted to other residential uses. However, for generating sites where the Department of Buildings does not require floor area calculations, the amount of affordable floor area shall be determined by methods specified in the guidelines.

(d) The amount of low income, moderate income and middle income floor area in a generating site, and the amount of qualifying floor area for any income band in an MIH site, shall be determined in the same manner 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 and MIH Zoning Lots

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

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

23-951 Floor area compensation in R10 Districts other than Inclusionary Housing designated areas

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

For each square foot of #floor area# provided for a type of #affordable housing# listed in the table in this Section, the #floor area# of the #compensated zoning lot# may be increased by the number of square feet set forth in the table, as applicable. Any #generating site# for which #public funding# has been received within the 15 years preceding the #regulatory agreement date#, or for which #public funding# is committed to be provided subsequent to such date, shall be deemed to be provided with #public funding#.
<table>
<thead>
<tr>
<th>Without #public funding#</th>
<th>#New construction affordable housing# or #substantial rehabilitation affordable housing#</th>
<th>3.5</th>
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<tbody>
<tr>
<td></td>
<td>#Preservation affordable housing#</td>
<td>2.0</td>
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</table>

| With #public funding# | #New construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing# | 4.25 |

23-952

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

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

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

<table>
<thead>
<tr>
<th>Maximum #Residential Floor Area Ratio#</th>
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<tbody>
<tr>
<td>District</td>
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<tr>
<td>R6B</td>
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<td>R6</td>
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<tr>
<td>R6^2-R6A-R7-2^1</td>
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<tr>
<td>R7A-R7-2^2</td>
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<td>R7X</td>
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23-953
Special floor area compensation provisions in specified areas

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

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

(1) The residential floor area of a development or enlargement may be increased by 0.833 square feet for each one square foot of moderate income floor area, or by 0.625 square feet for each one square foot of middle income floor area, provided that for each square foot of such floor area compensation, there is one square foot of floor area compensation, pursuant to Section 23-952;

(2) However, the amount of affordable housing required to receive such floor area compensation need not exceed the amounts specified in this paragraph, (a)(2). If affordable housing is provided for both low income and moderate income households, the amount of moderate income floor area need not exceed 15 percent of the total floor area, exclusive of ground floor non-residential floor area, on the zoning lot, provided that the amount of low income floor area is at least 10 percent of the total floor area, exclusive of ground floor non-residential floor area, on the zoning lot. If affordable housing is provided for both middle income households and low income households, the amount of middle income floor area need not exceed 20 percent of the total floor area, exclusive of ground floor non-residential floor area, on the zoning lot, provided that the amount of low income floor area is at least 10 percent of the total floor area, exclusive of ground floor non-residential floor area, on the zoning lot.

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

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

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

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

(2) The amount of affordable floor area utilizing public funding that may count toward satisfying the affordable floor area required in paragraph (b)(1) of this Section shall be determined in accordance with procedures prescribed by the City Planning Commission pursuant to the provisions of Section 74-743 (Special provisions for bulk modification).

(c) Special provisions for compensated zoning lots

Special provisions shall apply to compensated zoning lots located within:

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

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

23-954 23-951
Height and setback for compensated developments in Inclusionary Housing designated areas
In #Inclusionary Housing designated areas#, the #compensated development# shall comply with the height and setback regulations of Sections 23-66 or 35-65 (Height and Setback Requirements for Quality Housing Buildings) 23-633 (Street wall location and height and setback regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), as applicable, except that:

(a) in #Special Mixed Use Districts#, the #compensated development# shall comply with the provisions of paragraphs (a) or (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations), as applicable. However, where the #Residence District# designation is an R6 District without a letter suffix, the #compensated development# shall comply with the height and setback regulations of Section 23-66 Section 23-633, regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program;

(b) in R10 Districts without a letter suffix, the #compensated development# shall comply with the underlying height and setback regulations for such district; and

(c) on #waterfront blocks# and in R7-3 Districts, the #compensated development# shall comply with the special regulations applying in the #waterfront area# set forth in Section 62-30 (SPECIAL BULK REGULATIONS), inclusive.

**23-952**

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

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

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

(b) In R9 Districts without a letter suffix, the regulations of Section 23-651 (Tower-on-a-base) may apply, provided such #MIH development# is on a #zoning lot# that meets the requirements set forth in paragraph (a) of Section 23-65 (Tower Regulations).

(c) In R6-R9 Districts without a letter suffix within #Mandatory Inclusionary Housing areas#, the height and setback regulations of Section 23-64 (Basic Height and Setback Regulations) may apply. In addition, for R9 Districts that do not meet the requirements of paragraphs (a) and (c) of Section 23-65 (Tower Regulations), the tower provisions of Section 23-652 (Standard tower) may apply, subject to the #lot coverage# provisions of
Section 23-65. However, when the height and setback and tower regulations specified in this paragraph are utilized, the maximum floor area ratio on an MIH zoning lot shall be determined in accordance with the provisions of Section 23-151 (Basic regulations for R6 through R9 Districts).

### 23-955 953

Additional requirements for compensated developments and MIH developments

(a) **Compensated development** or **MIH development** building permits

   (1) HPD may issue a permit notice to the Department of Buildings at any time on or after the regulatory agreement date. The Department of Buildings may thereafter issue building permits to a compensated development that utilizes floor area compensation, or an MIH development, based on the affordable housing 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 for Generating Sites or MIH Sites

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

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

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

(1) the #generating site# or #MIH site# and the #compensated zoning lot# or the #MIH zoning lot#, as applicable, shall be located within the same Community District; or

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

However, special rules for the location of a #generating site# and a #compensated zoning lot# apply in Community District 1, Borough of Brooklyn, where the provisions of paragraph (a)(2) of this Section shall apply only to adjacent community districts located
in the Borough of Brooklyn; in the #Special Clinton District#, pursuant to the provisions of Section 96-21 (Special Regulations for 42nd Street Perimeter Area); in the #Special Downtown Jamaica District#, pursuant to the provisions of Section 115-211 (Special Inclusionary Housing regulations); and in the #Special Southern Hunters Point District#, pursuant to the provisions of Section 125-22 (Newtown Creek Subdistrict).

(b) Distribution of #affordable housing units#

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

(1) the #affordable housing units# shall be distributed on not less than 65 percent of the #residential stories# of such #generating site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#; and

(2) not more than one-third of the #dwelling units# and #rooming units# on any #story# of such #generating site# shall be #affordable housing units#, unless not less than one-third of the #dwelling units# and #rooming units# on each #residential story# of such #generating site# are #affordable housing units#. However, on a #residential story# with fewer than three #dwelling units# or #rooming units#, only one #dwelling unit# or #rooming unit# may be an #affordable housing unit#, unless not less than one #dwelling unit# or #rooming unit# on each floor is an #affordable housing unit#.

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

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

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

(1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# in a #generating site# or #MIH site#, other than any #super’s unit#, are not #affordable housing units#, either:

   (i) the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain a bedroom mix at least proportional to the bedroom mix of the #dwelling units# in the #generating site#, other than any #super’s unit#, that are not #affordable housing units#; or

   (ii) not less than 50 percent of the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain one or more bedrooms.

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

(2) Where all of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, in #new construction affordable housing# and #substantial rehabilitation affordable housing# are #affordable housing units#, not less than 50 percent of such #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of such #affordable housing units# shall contain one or more bedrooms. However, such bedroom mix requirements shall not apply to #affordable 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, HPD may specify the method of measuring floor area within affordable housing units in the guidelines, compliant with Department of Buildings practice; and the average size of affordable housing units of a particular bedroom count shall be not less than the average size of dwelling units that are not affordable housing units with the same number of bedrooms, but need not exceed the minimum size specified above for a dwelling unit of a particular bedroom count. In addition, these unit size requirements shall not apply to affordable independent residences for seniors in an MIH site.

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

(2) Where all of the dwelling units in a generating site or MIH site, other than any super’s unit, in new construction or substantial rehabilitation affordable housing are affordable housing units, HPD may waive such square footage requirements for any affordable housing unit that is participating in a Federal, State or local program where such generating site 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 Section 23-94, paragraph (c).

(3) The #regulatory agreement# shall be recorded against all tax lots comprising the portion of the #zoning lot# within which the #generating site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #affordable housing plan# for the entire #regulatory period#.

(4) #Affordable housing# may serve to secure debt with the prior approval of #HPD#. Any lien securing such debt shall be subordinated to the #regulatory agreement#.

(5) The #regulatory agreement# may, but shall not be required to, provide that such #regulatory agreement# may be terminated prior to the issuance of a temporary or permanent certificate of occupancy for any #compensated development# by the Department of Buildings.

(6) Where all of the #dwelling units#, #rooming units# or #supportive housing units# in a #generating site#, other than any #super's unit#, are #affordable housing units#, the #regulatory agreement# shall provide that, following a default and any applicable opportunity to cure, #HPD# may, in addition to any other remedies provided therein or by applicable law:

(i) appoint a receiver to manage such #generating site#; or

(ii) take control of the board of directors of any housing development fund company or not-for-profit corporation that owns, controls or operates such #generating site#.

(7) Where applicable in accordance with paragraph (b), (Monthly rent), of Section 23-961, the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

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

(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

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
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, or 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#: 

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#;

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 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#;

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#.

(f) Special requirements for rental #substantial rehabilitation affordable housing#

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

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;

(3) on the regulatory agreement date, HPD shall have determined that the condition of such generating site is sufficient, or will be sufficient after required improvements specified in the affordable housing plan and the regulatory agreement, to ensure that, with normal maintenance and normal scheduled replacement of capital elements, the affordable housing units will provide a decent, safe and sanitary living environment for the entire regulatory period;

(4) on the regulatory agreement date, HPD shall have determined either that no capital element is likely to require replacement within 30 years from the regulatory agreement date or that, with regard to any capital element that is likely to require replacement within 30 years from the regulatory agreement date, a sufficient reserve has been established to fully fund the replacement of such capital element;

(5) except with the prior approval of HPD, monthly rents charged for affordable housing units shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a generating site, even though such increases may be permitted by other laws; and

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

23-962
Additional requirements for homeownership affordable housing

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

(a) Homeowner selection

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

(2) A homeowner may, with the prior approval of the administering agent, sublet
an #homeownership affordable housing unit# to another #low income household#, #moderate income household#, #middle income household#, or #eligible buyer# or, for #MIH sites#, #qualifying household#, as applicable, for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes paid by the sublessor.

(3) A #homeowner# shall reside in the #homeownership affordable housing unit#, except as provided in paragraph (a)(2) of this Section.

(4) The restrictions in this paragraph, (a), on the ownership of #homeownership affordable housing units# shall not prevent the exercise of a valid lien by a #mortgage# lender, #cooperative corporation#, #condominium association# or any other entity authorized by the #regulatory agreement# to take possession of a #homeownership affordable housing unit# in the event of default by the #homeowner#. However, any #sale# or #resale# by such lien holder shall be to an #eligible buyer#, in accordance with this paragraph, (a), and the #guidelines#.

(b) Price

(1) The #initial price# or #maximum resale price# of any #homeownership affordable housing unit# shall be set assuming a #mortgage#, as defined in Section 23-913 (Definitions applying to homeownership generating sites).

(2) The #regulatory agreement# shall establish the #initial price# for each #homeownership affordable housing unit#. #HPD# shall set the #initial price# to ensure that the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid directly by the #homeowner# will not exceed 30 percent of the #low income limit#, #moderate income limit# or #middle income limit#, as applicable. For #MIH sites#, #HPD# shall establish the #initial price# based on the incomes of #qualifying households# in accordance with the #guidelines#.

(3) Prior to any #resale# of a #homeownership affordable housing unit#, the #administering agent# shall set the #maximum resale price# for such #homeownership affordable housing unit#.

(4) The #administering agent# shall not approve any #resale# unless the selected #eligible buyer# provides a #down payment#, as specified in the #guidelines#.

(5) A #homeownership affordable housing unit#, or any shares in a #cooperative corporation# appurtenant thereto, shall not secure any debt unless such debt is a #mortgage# that has been approved by the #administering agent#.
(c) Income

(1) The administering agent shall verify the household income of a proposed homeowner, in accordance with the guidelines, prior to the sale date of any homeownership affordable housing unit in order to ensure that, upon sale, it is a low income household, moderate income household, or middle income household or, for MIH sites, qualifying household, as applicable, and that upon resale, it is to an eligible buyer.

(2) The administering agent shall meet reporting requirements on each sale and resale, as set forth in the guidelines.

(3) Each year after the commencement date, in the month specified in the regulatory agreement or the guidelines, the administering agent shall submit an affidavit to HPD attesting that each resale of a homeownership affordable housing unit during the preceding year complied with all applicable requirements on the resale date.

(d) Affordable housing plan and MIH application

The following shall apply to affordable housing plans:

(1) An affordable housing plan shall include the building plans, state the number and bedroom mix of the homeownership affordable housing units to be developed, rehabilitated or preserved, indicate how homeowners will be selected upon each sale or resale of a homeownership affordable housing unit, indicate how the household income of eligible buyers will be verified prior to such household’s initial occupancy of a homeownership affordable housing unit and include such additional information as HPD deems necessary.

(2) An affordable housing plan shall demonstrate the feasibility of creating and maintaining homeownership affordable housing, including that:

(i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the affordable housing;

(ii) affordable housing units will be sold under the supervision of a responsible administering agent to eligible buyers at each sale and resale; and

(iii) homeowners will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.

(3) The requirements of Section 23-961, paragraph (d)(3), shall apply.
The following shall apply to MIH applications:

(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 (f), inclusive.

(1) HPD may permit a household to occupy a new construction homeownership affordable housing unit as rental affordable housing if:

(i) no more than 120 days prior to the regulatory agreement date, such household occupied a dwelling unit or rooming unit in a building located on the zoning lot of such new construction homeownership affordable housing, pursuant to a lease or occupancy agreement to which one or more members of such household was a party or pursuant to a statutory tenancy;

(ii) no more than 120 days prior to the regulatory agreement date, the average rent for all occupied dwelling units or rooming units in such building did not exceed 30 percent of the low income limit divided by 12; and

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

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

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

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

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

(1) on the #regulatory agreement date#, the #generating site# shall be an existing #building# containing #residences#;

(2) on the #regulatory agreement date#, the average of the #legal regulated rents#, as such term is defined in Section 23-912, for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

(3) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 (Additional requirements for rental affordable housing) until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;

(4) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;

(5) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and
such affordable housing shall comply with such additional criteria as may be specified by HPD in the guidelines.

(h) Special requirements for homeownership substantial rehabilitation affordable housing

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

1. on the regulatory agreement date, the generating site or MIH site shall be an existing building;

2. such affordable housing shall be created through the rehabilitation of such existing building at a cost per completed homeownership affordable housing unit that exceeds a minimum threshold set by HPD in the guidelines;

3. on the regulatory agreement date, the average of the legal regulated rents for all homeownership affordable housing units in the generating site that are occupied by grandfathered tenants shall not exceed 30 percent of the low income limit divided by 12;

4. where grandfathered tenants continue in residence subsequent to the regulatory agreement date, any affordable housing unit that is occupied by a grandfathered tenant shall be operated subject to the restrictions of Section 23-961 until such affordable housing unit is purchased and occupied by an eligible buyer;

5. on the regulatory agreement date, HPD shall have determined that the condition of such generating site is sufficient, or will be sufficient after required improvements specified in the affordable housing plan and the regulatory agreement, to ensure that, with normal maintenance and normal scheduled replacement of capital elements, the affordable housing units will provide a decent, safe and sanitary living environment for the entire regulatory period;

6. on the regulatory agreement date, HPD shall have determined either that no capital element is likely to require replacement within 30 years from the regulatory agreement date or that, with regard to any capital element that is likely to require replacement within 30 years from the regulatory agreement date, a sufficient reserve has been established to fully fund the replacement of such capital element; and

7. such affordable housing shall comply with such additional criteria as may be specified by HPD in the guidelines.
62-80
SPECIAL REVIEW PROVISIONS

62-83
Special Permits by the City Planning Commission

62-831
General Provisions

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

62-832 832
Docks for passenger ocean vessels in C6 Districts

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

62-833 834
Uses on floating structures

62-834 835
Developments on piers or platforms
Reduction or modification of Mandatory Inclusionary Housing requirements

For a #development#, #enlargement# or #conversion# subject to the provisions of paragraphs (d)(3)(i) through (d)(3)(iv) of Section 23-154 (Inclusionary Housing), the Board of Standards and Appeals may, upon determining that a hardship exists that is specifically created by the requirements for #affordable housing#, modify the income levels specified for #qualifying households#, reduce the amount of #affordable floor area# required, or reduce the amount of a payment into the #affordable housing fund#, provided that:

(a) the applicant has applied for any appropriate relief for which such #development#, #enlargement# or #conversion# is eligible for any financial hardship or practical difficulty not specifically created by the requirements of Section 23-154, paragraphs (d)(3)(i) through (d)(3)(iv);

(b) such requirements for #affordable housing# or a contribution to an #affordable housing fund# create an unnecessary hardship, with no reasonable possibility that a #development#, #enlargement#, or #conversion# on the #zoning lot# in strict compliance with the provisions of Section 23-154, paragraphs (d)(3)(i) through (d)(3)(iv), and Section 23-90 (Inclusionary Housing), inclusive, will bring a reasonable return, and that a modification or reduction of these requirements is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#; and

(c) the unnecessary hardship claimed as a basis for such modification or reduction has not been created by the owner or by a predecessor in title.

In determining whether a hardship exists, the Board may consider whether alternative permitted #uses# or forms of housing tenure would bring a reasonable return from the #zoning lot#.
The Board may modify #affordable housing# requirements set forth in Section 23-154, paragraphs (d)(3)(i) through (d)(3)(iii), to permit appropriate relief as follows:

First, the Board shall determine whether compliance with the requirements of Options 1 or 2, as set forth in Section 23-154, paragraphs (d)(3)(i) and (d)(3)(ii), respectively, where not otherwise permitted, provides sufficient relief.

If the Board does not so find, the Board shall next determine whether compliance with the requirements of the Workforce Option, as set forth in Section 23-154, paragraph (d)(3)(iii), where not otherwise permitted, provides sufficient relief.

If the Board does not so find, the Board, in consultation with the Department of Housing Preservation and Development, shall determine a modification or reduction of the requirements of Section 23-154, paragraph (d)(3)(i) through (d)(3)(iii), that represents the minimum necessary modification or reduction to afford relief.

In addition, the Board, in consultation with the Department of Housing Preservation and Development, may permit a modification or reduction of the requirements of Section 23-154, paragraph (d)(3)(iv) that represents the minimum necessary modification or reduction to afford relief.

A copy of each application to the Board for a special permit under the provisions of this Section shall be provided by the applicant to the Department of Housing Preservation and Development concurrently with its submission to the Board. The Department of Housing Preservation and Development may make submission to or appear before the Board on any application made pursuant to this Section.

The Board may prescribe such conditions and safeguards as it deems necessary to minimize adverse effects upon the surrounding area and the community at large.

* * *

74-00
POWERS OF THE CITY PLANNING COMMISSION

74-01
General Provisions

* * *

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

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

* * *

74-30
SPECIAL PERMIT USES AND BULK MODIFICATIONS

74-31
General Provisions for Special Permit Uses

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

* * *

74-32
Additional Considerations for Special Permit Use and Bulk Modifications

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

* * * END * * *