

**CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

**Notice of Adoption of Rules Regarding a  
Pilot Program Requiring Certifications of No Harassment**

Notice is hereby given that pursuant to the authority vested in the commissioner of the Department of Housing Preservation and Development (HPD) by section 1043 and 1802 of the New York City Charter, and Administrative Code sections 27-2093.1 and 28-505.3, HPD is adopting rules regarding a Pilot Program requiring Certifications of No Harassment for certain buildings.

A notice of proposed rulemaking was published in the City Record on July 6, 2018. A public hearing was held on August 7, 2018.

**Statement of Basis and Purpose of the Rule**

The rules implement and clarify new legislation, Local Law 1 for the year 2018, enacted by the City Council regarding certifications of no harassment. The legislation provides for a pilot program which requires certain buildings with high levels of physical distress or ownership changes, as prescribed in these rules, in certain targeted areas of the City, to be placed on a building list. Buildings that are the subject of a full vacate order, or that have been active participants in the alternative enforcement program for more than four months since February 1, 2016, as well as buildings where there has been a finding of harassment within the last five years by a court or by New York State Homes and Community Renewal, are also included on the list.

The owners of these buildings who apply to the Department of Buildings (DOB) for approval of construction documents or an initial or reinstated permit to perform certain covered categories of work will be required to receive a certification of no harassment from the Department of Housing Preservation and Development (HPD) before a DOB approval can be issued. The application for the certification of no harassment will trigger an investigation into whether there has been harassment of tenants at such building within the five-year period preceding the application. If an owner is found to have harassed tenants, the owner will be precluded from receiving a building permit for the covered categories of work for five years, or, in the alternative, the owner may construct a certain percentage of low income housing units to address the harassment finding.

The rules provide for: (1) criteria for the building qualification index, to evaluate prospective buildings for indicators of distress; (2) additional categories of covered work and exemptions for such work; (3) categories of buildings that are exempt from the requirement to apply for a certification of no harassment; (4) administration of applications for certifications of no harassment; (5) specifications for cure agreements; and (6) fees for applications and administrative expenses.

HPD's authority for these rules is found in section 1802 of the New York City Charter and New York City Administrative Code sections 27-2093.1 and 28-505.3.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 28 of the rules of the city of New York is amended by adding a new chapter 53 to read as follows:

### Chapter 53

#### Pilot Program Buildings Certifications of No Harassment

§53-01. Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

Access Authorizer. The term “Access Authorizer” means the person who authorizes the Department or a person or entity designated by the Department to enter the Pilot Program Building for purposes of an investigation of an application for a Certification of No Harassment. The Access Authorizer shall be a natural person who either has legal possession of all common areas of the Pilot Program Building, or is authorized to sign on behalf of and bind the persons or entities who have legal possession of all common areas of the Pilot Program Building.

Applicant. The term "Applicant" means the person who executes an application for a Certification of No Harassment, and shall be a natural person who is either: (1) an Owner, or (2) a principal or officer of an Owner who is authorized to sign on behalf of and bind such Owner.

Building Qualification Index. The term “Building Qualification Index” means an index created by the Department in accordance with section 27-2093.1 of the Administrative Code to evaluate prospective Pilot Program Buildings for distress as set forth in section 53-03 of these rules.

Certification of No Harassment. The term "Certification of No Harassment" means a certification by the Department that no harassment of any lawful occupants of a Pilot Program Building occurred during the 60 month period prior to the filing of an application for such certification.

City-sponsored Neighborhood-wide Rezoning Area. The term “City-sponsored Neighborhood-wide Rezoning Area” means an area of the zoning map for which:

(1) amendments to the zoning regulations pertaining to such area were proposed by the City;

(2) the city planning commission approved or approved with modifications such amendments for a matter described in paragraph 3 of subdivision a of section 197-c of the charter;

(3) the city planning commission decision was approved or approved with modifications by the council pursuant to section 197-d of the charter and is not subject to further action pursuant to subdivision e or f of such section;

(4) the zoning map amendments increased the permitted residential floor area ratio within the rezoned area by at least 33 percent; and

(5) the amendments involved at least 10 blocks of real property in such area.

Commissioner. The term “Commissioner” means the Commissioner of the Department of Housing Preservation and Development.

Covered Categories of Work. The term “Covered Categories of Work” means the following types of construction or other work that require a building owner to obtain a Certification of No Harassment prior to approval of construction documents by the Department of Buildings:

(1) demolition of all or part of the Pilot Program Building;

(2) change of use or occupancy of all or part of a dwelling unit, any residential portion of the Pilot Program Building, or any part of such building serving such dwelling units;

(3) any alteration resulting in the addition or removal of kitchens or bathrooms, an increase or decrease in the number of dwelling units, or any change to the layout, configuration, or location of any portion of any dwelling unit;

(4) an application for a new or amended certificate of occupancy; and

(5) removal of a central heating system and replacement with an individually metered heating system, provided that this type of work shall be considered a Covered Category of Work for any plan approval or any application for a permit or renewal of a permit submitted to the Department of Buildings on and after September 1, 2019.

Department. The term “Department” means the Department of Housing Preservation and Development.

Exceptions to Covered Categories of Work. The term “Exceptions to Covered Categories of Work” means the following types of construction or other work that, notwithstanding the definition of Covered Categories of Work, do not require a building owner to obtain a Certification of No Harassment prior to approval of construction documents by the Department of Buildings:

(1) Work solely for the purpose of either:

(a) making the public areas of a Pilot Program Building accessible to persons with disabilities without altering the configuration of any dwelling unit or rooming unit, or

(b) making the interior or the entrance to a dwelling unit or a rooming unit accessible to persons with disabilities.

(2) Repairs, demolition, or any other work performed by a city agency or by a contractor pursuant to a contract with a city agency.

(3) Repairs, demolition, or any other work performed by an owner who has entered into a regulatory agreement for such building with the Department.

(4) Demolition of a building performed pursuant to a declaration of an immediate emergency or emergency demolition order issued by the Department of Buildings.

(5) Work performed in a building that has an administrator currently appointed pursuant to article seven-a of the real property actions and proceedings law.

(6) Work performed in a building that has been transferred to a third party transferee or that has been transferred by such third party transferee to a subsequent transferee approved by the Department pursuant to an in rem foreclosure judgment under the Third Party Transfer program, authorized under chapter 3 of title 11 of the Administrative Code and the rules set forth in 28 RCNY chapter 8.

Fee. The term "Fee" means a sum in the amount of \$160.00 per existing dwelling unit which amount is a fee to offset all or part of the administrative cost to the Department of processing the application for a Certification of No Harassment.

Harassment. The term "Harassment" has the meaning set forth in subdivision 48 of section 27-2004 of the Administrative Code, provided, however, that in investigating whether Harassment occurred pursuant to this Chapter, the Department shall apply the definition of Harassment in such section of the Administrative Code that existed during all relevant times of the Inquiry Period.

Inquiry Period. The term "Inquiry Period" means a period commencing 60 months prior to submission of the application for a Certification of No Harassment and ending on the date that the Department issues a final determination on such an application.

Low Income Housing. The term "Low Income Housing" means dwelling units that, upon initial rental and upon each subsequent rental following a vacancy, are affordable to and restricted to occupancy by individuals or families whose household income does not exceed an average of 50 percent of the area median income, adjusted for family size, at the time that such household initially occupies the dwelling unit, provided that with respect to Low Income Housing units provided pursuant to a cure agreement in accordance with subdivision (e) of section 27-2093.1

of the Administrative Code and these rules, one-third of such Low Income Housing units shall be affordable to and restricted to occupancy by individuals or families whose household income does not exceed 40 percent of the area median income, one-third of such units shall be affordable to and restricted to occupancy by individuals or families whose household income does not exceed 50 percent of the area median income, and one-third of such units shall be affordable to and restricted to occupancy by individuals or families whose household income does not exceed 60 percent of the area median income.

Luxury Hotel. The term "Luxury Hotel" shall have the meaning set forth in 28 RCNY section 10-01.

Owner. The term "Owner" means: (1) the holder of title to the property, (2) a contract vendee of title to the property, (3) the lessee pursuant to a net lease of the entire property with an unexpired term of not less than ten years from the date of submission of the application, or (4) a receiver who is authorized by court order to apply to the Department for a Certification of No Harassment and to the Department of Buildings for a building permit.

Pilot Program Building. The term "Pilot Program Building" means a multiple dwelling included on the Pilot Program List.

Pilot Program List. The term "Pilot Program List" means a list of multiple dwellings with six or more dwelling units meeting the criteria set by subdivision b of section 27-2093.1 of the Administrative Code and by the Department pursuant to these rules. Such multiple dwelling shall remain on the Pilot Program List for 60 months, or until expiration of the local law that authorizes these rules, whichever is later. Such list shall not include any multiple dwelling that:

(1) is subject to any other provision of law or rules, including the zoning resolution, that requires a Certification of No Harassment as a condition to obtaining approval of construction documents or an initial or reinstated permit in connection therewith from the Department of Buildings;

(2) is the subject of a Department-approved program related to the rehabilitation or preservation of a single room occupancy or the provision of affordable housing for persons of low or moderate income, other than a program consisting solely of real property tax abatement or tax exemption pursuant to the real property tax law, and is exempted from the provisions of section 27-2093.1 of the Administrative Code as an exempt program upon review and approval by the Commissioner. For purposes of such exemption, the term, "Affordable Housing" shall mean dwelling units for which occupancy or initial occupancy is required to be restricted based upon the income of the occupant or prospective occupant thereof as a condition of: (i) a loan, grant, tax exemption (except as otherwise provided herein), regulatory agreement, or conveyance of property from any state or local governmental agency or instrumentality pursuant to the Private Housing Finance Law, other than article 8-B of such law, or the General Municipal Law, or (ii) a tax exemption pursuant to section 420-c of the Real Property Tax Law. Affordable Housing shall not include dwelling units for which occupancy or initial occupancy is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of a tax exemption pursuant to section 421-a of the Real Property Tax Law;

(3) contains dwelling units that are required to be and actually are restricted based on income pursuant to an agreement under the mandatory inclusionary housing program or the voluntary inclusionary housing program, provided that the income-restricted units that are required by such agreement are occupied at the time of application for a Certification of No Harassment;

(4) is a Rent Regulated Institutional Residence, the occupancy of which is restricted to non-profit institutional use exempted from the requirements of section 27-2093.1 of the Administrative Code by the Department;

(5) is owned by the city or other governmental entity;

(6) is a clubhouse;

(7) is a college or school dormitory; or

(8) is a Luxury Hotel.

Rent Regulated Institutional Residence. The term "Rent Regulated Institutional Residence" means a multiple dwelling the occupancy of which is restricted to non-profit institutional use and was restricted to non-profit institutional use during the Inquiry Period, is rent-regulated, and which has been exempted from the provisions of section 27-2093.1 of the Administrative Code by written determination of the Department.

§53-02. Pilot Program List.

(1) A Pilot Program List will be provided by the Department on its website, and the initial Pilot Program List will published in the City Record.

(2) The criteria used to select buildings to be included on the Pilot Program List shall include:

(a) Buildings with scores on the Building Qualification Index indicating significant distress as determined by the Department, and located within:

(i) Bronx community district 4,

(ii) Bronx community district 5,

(iii) Bronx community district 7,

(iv) Brooklyn community district 3,

(v) Brooklyn community district 4,

(vi) Brooklyn community district 5,

(vii) Brooklyn community district 16,

(viii) Manhattan community district 9,

(ix) Manhattan community district 11,

(x) Manhattan community district 12,

(xi) Queens community district 14, and

(xii) Any community district where any part of such district is subject to a City-sponsored Neighborhood-wide Rezoning after December 31, 2017. Such community district will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is designated;

(b) Buildings where a full vacate order has been issued by the Department or by the Department of Buildings within the five-year period prior to July 24, 2018;

(c) Buildings where there has been active participation in the Department's alternative enforcement program pursuant to an order issued by the Department for more than four months since February 1, 2016 and the Department has determined that an order will be issued . A building will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is identified for issuance of an order by the Department; and

(d) Buildings where there has been a final determination by New York State Homes and Community Renewal or any court having jurisdiction that one or more acts of Harassment were committed at such building after September 27, 2013. A building will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is identified as having been the subject of such determination, provided, however that where such final determination was made on default judgment, and such default is opened by the court having jurisdiction, such building will be removed from the Pilot Program List within 30 days of notification by the owner unless such building meets other criteria for inclusion on such list.

§53-03. Criteria for the Building Qualification Index. The criteria used to evaluate prospective Pilot Program Buildings for distress shall include:

(1) The number of open and closed hazardous and immediately hazardous violations of the housing maintenance code per adjusted dwelling unit that were issued by the Department within the five-year period prior to July 24, 2018, rated on a range of values from zero to ten. For the purposes of this section, “adjusted dwelling unit” refers to the natural logarithm of dwelling units in the building, calculated in order to limit underweighting of serious building-wide violations in very large buildings.

(2) The total amount of paid or unpaid emergency repair charges per adjusted dwelling unit levied against the building within the five-year period prior to July 24, 2018, rated on a range of values from zero to ten.

(3) The ratings in this section are based on the number of standard deviations above the average at the time of evaluation. Buildings above such average score 2.5 points, and an additional 2.5 points for each of up to 3 standard deviations above the average. The following scores will result in placement of a building on the Pilot Program List:

(a) Buildings with no ownership changes within a five-year period prior to July 24, 2018, and a combined score of 15 or more for criteria in subdivisions (1) and (2) of this section;

(b) Buildings with one ownership change within a five-year period prior to July 24, 2018 and a combined score of ten or more for criteria in subdivisions (1) and (2) of this section; and

(c) Buildings with two or more ownership changes within a five-year period prior to

July 24, 2018, and a combined score of five or more for criteria in subdivisions (1) and (2) of this section.

§53-04. Application for Certifications of No Harassment

(1) An application for a Certification of No Harassment shall contain such information, in such form, as the Department shall require.

(2) An application shall be executed by an Applicant. If the Applicant is not an Access Authorizer, the application shall also be executed by an Access Authorizer.

(3) An application may be submitted to the Department:

(a) by hand delivery on business days, during such hours and in such location as the Department shall determine,

(b) by mail,

(c) by private courier, or

(d) electronically, as provided by the Department.

(4) The submission of any application shall be accompanied by certified check, bank check, electronic payment, or money order in the amount of the Fee made payable to Department of Finance.

(5) Following the submission of an application, the Department may request any additional information that it determines is relevant to the application. If the Department sends a written request for additional information to the Applicant by regular or certified mail or email at the address or email of the Applicant set forth in the application, and it does not receive such additional information within 30 days following the mailing or emailing of such request, the Department may:

(a) reject the application, or

(b) review the application without such information and draw a negative inference with respect to the missing information.

(6) An application shall be deemed to be complete when the completed application, the fee, and the necessary supporting documentation have been received and acknowledged as sufficient by the Department.

(7) If the Department determines at any time that an application contains a material misstatement of fact, it may reject such application and bar the submission of a new application for a period not to exceed five years.

(8) The Department may refuse to act upon or may reject, an application for a Certification where it finds at any time that:

(a) taxes, water and sewer charges, emergency repair program charges, alternative enforcement program charges, or any other municipal charges remain unpaid with respect to the multiple dwelling;

(b) the Pilot Program Building is being used or has been altered either without proper permits from the Department of Buildings or in a way that conflicts with the certificate of occupancy for such building (or, where there is no certificate of occupancy, any record of the Department indicating the lawful configuration and use of the such building) and such unlawful alteration or use remains uncorrected;

(c) the application is incomplete or is missing information;

(d) the building is not validly registered with the Department; or

(e) the Department has previously denied an application pursuant to these rules.

(9) If any information stated in an application changes at any time before the Department makes a final determination, the Applicant shall promptly update the application with such new information and submit it to the Department. If such changed information includes any facts that would render the original Applicant ineligible to submit the application, the Department may require that the amended application be executed by an individual who is at that time eligible to submit the application.

(10) An application may not be withdrawn after the Department issues either:

(a) an initial determination that there is reasonable cause to believe that Harassment occurred during the Inquiry Period at the Pilot Program Building, or

(b) a final determination that Harassment occurred during the Inquiry Period at the Pilot Program Building.

§53-05. Investigation.

(1) The Department may designate a community group to conduct a survey of the occupants of a Pilot Program Building with respect to Harassment in such building and to report its findings to the Department. Based upon the findings of such community group or the Department's review of records and other data, the Department may determine that it is necessary to conduct a further investigation.

(2) Upon receipt of an application for a Certification of No Harassment, the Department shall publish a notice, as provided in subdivision d of section 27-2093.1 of the Administrative Code, seeking public comment regarding whether there has been Harassment of the lawful occupants of the Pilot Program Building during the Inquiry Period.

§53-06 Initial Determination.

(1) Upon the completion of the investigation of an application for a Certification of No Harassment, the Department shall:

(a) reject such application,

(b) determine that there is not reasonable cause to believe that Harassment occurred during the Inquiry Period at the Pilot Program Building,

(c) determine that there is reasonable cause to believe that Harassment occurred during the Inquiry Period at the Pilot Program Building, or

(d) determine that there has been a final determination by New York State Homes and Community Renewal or any court having jurisdiction, that one or more acts of Harassment,

unlawful eviction or arson by or on behalf of the owner were committed at the Pilot Program Building during the Inquiry Period.

(2) If the Department refuses to act upon or rejects an application as provided in section 53-04 or this section of these rules, it shall send written notice of such determination to the Applicant.

(3) If the Department determines that there is not reasonable cause to believe that Harassment occurred during the Inquiry Period at the Pilot Program Building, the Department shall:

(a) send written notice of such determination to the Applicant, and

(b) grant the Certification of No Harassment.

(4) If the Department determines that there is reasonable cause to believe that Harassment occurred during the Inquiry Period at the Pilot Program Building, the Department shall send written notice of such determination to the Applicant and shall comply with the procedures set forth in sections 53-07 and 53-08 of these rules.

(5) If the Department determines that there has been a final determination by New York State Homes and Community Renewal or any court having jurisdiction that one or more acts of Harassment, unlawful eviction or arson by or on behalf of the owner were committed at the Pilot Program Building during the Inquiry Period, the Department may deny the application without a hearing and issue a final determination in accordance with section 53-08 of these rules. In such event, the Department may combine the initial determination pursuant to this section and the final determination pursuant to section 53-08 of these rules into a single document.

#### §53-07 Hearing.

(1) When the Department has determined in accordance with these rules that there is reasonable cause to believe that Harassment occurred at the Pilot Program Building during the Inquiry Period, the Department shall schedule a hearing before the Office of Administrative Trials and Hearings. The Applicant shall have the opportunity to be heard at such hearing prior to the granting or denial of the Certification of No Harassment.

(2) The Department shall serve a notice of hearing by regular mail upon the Applicant and any other individual or entity as determined by the Department, in the manner prescribed by the Office of Administrative Trials and Hearings. Such notice shall state the date, time, and location of the hearing and shall inform the Applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(3) At such hearing, the Department, in its discretion, may receive relevant testimony from tenants, community groups, and any other interested parties.

(3) Upon conclusion of such hearing, the hearing officer shall make a report and recommendation to the Commissioner whether an application should be granted or denied.

(4) Notwithstanding anything to the contrary in this section or these rules, an Applicant may waive its right to a hearing before the Office of Administrative Trials and Hearings.

#### §53-08 Final Determination.

(1) When the Department has determined that there is reasonable cause to believe that Harassment occurred at the Pilot Program Building during the Inquiry Period and a hearing has been held before the Office of Administrative Trials and Hearings, the Commissioner shall review the report and recommendation of the hearing officer and make a final determination to grant or deny the application.

(2) When the Department has determined that there is reasonable cause to believe that Harassment occurred at the Pilot Program Building during the Inquiry Period and the Applicant has waived its right to a hearing before the Office of Administrative Trials and Hearings, the Commissioner shall make a final determination to grant or deny the application.

(3) When the Department has determined that that there has been a final determination by New York State Homes and Community Renewal or any court having jurisdiction that one or more acts of Harassment were committed at the Pilot Program Building during the Inquiry Period, the Commissioner shall make a final determination to grant or deny the application. In such event,

the Department may combine the initial determination pursuant to these rules and the final determination pursuant to this section into a single document.

(4) The Department shall provide the Applicant with written notice of the final determination within 45 days after the Office of Administrative Trials and Hearings issues a report and recommendation. A final determination of denial shall be filed in the office of the city register or the Richmond county clerk.

#### §53-09 Certification of No Harassment.

(1) A Certification of No Harassment shall be effective for 60 months from the date upon which such certification is signed by the Commissioner, which period shall be stated in such certification. Such Certification shall apply to any plan approval, and any application for a permit or renewal of a permit for any Covered Categories of Work that is submitted to the Department of Buildings during such period.

(2) The Department shall not issue a Certification of No Harassment unless it has received an affidavit of no future harassment executed by one or more individual natural persons who are, at the time of execution of such affidavit, either:

(a) all of the Owners of the Pilot Program Building, or

(b) principals or officers of all of the Owners of the Pilot Program Building who are authorized to sign on behalf of and bind such Owners.

#### §53-10 Waiver or Exemption.

(1) Notwithstanding any provision of these rules to the contrary, if an application is for a waiver or exemption, the Department will waive the Fee.

(2) Notwithstanding any provision of these rules to the contrary, the Department may grant a waiver or exemption at any point following the submission of an application therefor in accordance with the provisions of section 27-2093.1 of the Administrative Code and these rules.

(3) A waiver or exemption shall be effective for such period and subject to such conditions as the Department shall determine, which shall be stated in such waiver or exemption. Such waiver or exemption shall apply to any plan approval, and any application for a permit or renewal of a permit for any Covered Categories of Work that is submitted to the Department of Buildings during such period which complies with such conditions, if any.

(4) The Department shall only issue a waiver that is in accordance with subdivision i of section 27-2093.1 of the Administrative Code.

(5) The Department shall not issue a waiver unless it has received an affidavit of no future Harassment executed by one or more individual natural persons who are either:

(a) all of the Owners of the Pilot Program Building, or

(b) principals or officers of all of the Owners of the Pilot Program Building who are authorized to sign on behalf of and bind such Owners.

#### §53-11 Suspension and Rescission.

(1) The Department may rescind a Certification of No Harassment or waiver at any time if it determines that the application for such Certification or waiver contained a material misstatement of fact.

(2) If the Department determines that there is reasonable cause to believe that Harassment has occurred after the date that it issued a Certification of No Harassment or a waiver, it may suspend such Certification or waiver. If such Certification or waiver was granted solely pursuant to the Administrative Code, the Department shall not suspend such Certification or waiver pursuant to the preceding sentence unless it determines that there is reasonable cause to believe that such harassment occurred before commencement of substantial work.

(3) If the Department determines that there is reasonable cause to believe that harassment has occurred after the date that it issued a Certification or a waiver, the Department shall deliver a notice of suspension to the Applicant. Notice of such suspension shall also be mailed to known

tenants of the Pilot Program Building and shall be filed with the city register or Richmond County clerk. The Department shall refer the matter for hearing at the Office of Administrative Trials and Hearings, provided, however, that if the Owner of the Pilot Program Building has been found by the New York State Homes and Community Renewal or any court having jurisdiction to have engaged in Harassment, unlawful eviction, or arson at such building after the Certification of No Harassment was granted, the Department may determine whether to rescind such Certification without commencing a proceeding at such office.

(4) The Department shall serve a notice of hearing by regular mail upon the Applicant and any other individual or entity, including known tenants of the Pilot Program Building, as determined by the Department, in the manner prescribed by the Office of Administrative Trials and Hearings. Such notice shall state the date, time, and location of the hearing and shall inform the Applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(5) At such hearing, the Department, in its discretion, may receive relevant testimony from such known tenants, community groups, and any other interested parties.

(6) Upon conclusion of such hearing, the hearing officer shall make a recommendation to the Commissioner whether or not the Certification of No Harassment or waiver should be rescinded.

(7) The Commissioner shall make a final determination whether or not to rescind such certification or waiver within 45 days of receiving the hearing officer's recommendation and shall provide the Applicant and the known tenants of the building with written notice of such determination. Such determination shall be filed as provided in subdivision f of section 27-2093.1 of the Administrative Code.

#### §53-12. Cure Agreement.

(1) Where the Department has denied an application for a Certification of No Harassment for a Pilot Program Building, or, where an owner has, in lieu of seeking a Certification of No

Harassment which is otherwise required, elected instead to seek a certification of compliance with the cure provisions described in subdivision e of section 27-2093.1 of the Administrative Code, such Owner may apply to the Department to cure the record of Harassment or satisfy the requirement for the Certification of No Harassment by entering into a cure agreement with the Department.

(2) Such cure agreement shall be a restrictive declaration and a regulatory agreement in such form as provided by the Department, and shall require compliance with such terms as shall be required by the Department.

(3) The restrictions, covenants, and provisions of such cure agreement shall run with the land and bind the Owner and all other parties in interest and their successors and assigns to the applicable property with Low Income Housing, and shall be perpetual in duration.

(4) Such cure agreement shall be recorded by the Owner in the office of the city register or the Richmond county clerk, and indexed against each tax lot with Low Income Housing within the zoning lot.

(5) The requirements of such cure agreement shall include compliance with the applicable Inclusionary Housing Guidelines and shall also include, but not be limited to that:

(a) The Owner shall construct floor area of Low Income Housing, either within the Pilot Program Building, in a new building on the same site as the Pilot Program Building, or in such same community district, of no less than the greater of: (i) 25 percent of the total residential floor area of such Pilot Program Building undergoing Covered Categories of Work in which harassment has occurred or for which the Owner has elected to seek a certification of compliance with the cure provisions of subdivision e of section 27-2093.1 of the Administrative Code, or (ii) 20 percent of the total floor area of any new or Pilot Program Building undergoing Covered Categories of Work on the lot containing the Pilot Program Building subject to the cure agreement;

(b) The Owner shall contract with an administering agent, which shall be an organization qualified by the Department to market and manage the Low Income Housing units and monitor compliance with the cure agreement;

(c) Lawful tenants of such Pilot Program Building during the Inquiry Period shall have priority in the allocation of such Low Income Housing units constructed by the Owner within the Pilot Program Building or in a new building at the same site as the Pilot Program Building if they otherwise qualify for such units;

(d) No construction of such required floor area of Low Income Housing units shall be used by the Owner to satisfy an eligibility requirement of any real property tax abatement or exemption program, or of a floor area ratio increase pursuant to section 23-90 and 23-154, inclusive, of the zoning resolution, for which the Owner otherwise may be eligible to apply, or to apply for a hardship waiver from any existing code or zoning resolution requirement, and such required floor area shall be in addition to and not in substitution for floor area of Low Income Housing that may be used by the owner to satisfy such an eligibility requirement;

(e) No city, state or federal subsidy shall be used for the construction of Low Income Housing units required pursuant to subdivision e of section 27-2093.1 of the Administrative Code. or these rules; and

(f) The initial rents charged by the Owner for the Low Income units shall not exceed an average of 50 percent of the area median income, adjusted for family size, at the time that such household initially occupies the dwelling unit, provided that with respect to Low Income Housing Units provided pursuant to a cure agreement in accordance with section 27-2093.1 of the Administrative Code, one-third of such Low Income Housing units shall be affordable to and restricted to occupancy by individuals or families whose household income does not exceed 40 percent of the area median income, one-third of such units shall be affordable to and restricted to occupancy by individuals or families whose household income does not exceed 50 percent of the area median income, and one-third of such units shall be affordable to and restricted to

occupancy by individuals or families whose household income does not exceed 60 percent of the area median income.

(g) If the Owner violates any term, covenant, or provision of the cure agreement, or if any representation made by the Owner is determined by the Department to be false or misleading, then the Department may declare a default under the cure agreement, and take such enforcement action as specified in such agreement or under law.