

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? HPD is proposing amendments to Chapter 41 of Title 28 of the Rules of the City of New York (the "Inclusionary Housing Rules") to conform the rules to changes to the Zoning Resolution of the City of New York (the "Zoning Resolution") that were adopted in 2016 and that established a Mandatory Inclusionary Housing (MIH) program.

When and where is the Hearing? HPD will hold a public hearing on the proposed rule. The public hearing will take place from 1:00 p.m. to 2:30 p.m. on Wednesday, May 24, 2017. The hearing will be in HPD's offices at 100 Gold Street, 5th Floor, Room 5R1, New York, New York 10038.

The location has the following accessibility option(s) available: the building and hearing room are wheelchair accessible.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HPD through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@hpd.nyc.gov.
- **Mail.** You can mail written comments to Associate Commissioner Louise Carroll, Department of Housing Preservation and Development, 100 Gold Street, Room 5-G3, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, (212) 863-8242, ATTN: Louise Carroll.
- **Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 863-6838. You can also sign up in the hearing room before the hearing begins on May 24, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be submitted on or before May 24, 2017.

Do you need assistance to participate in the Hearing? If you need a sign language interpreter or other reasonable accommodation of a disability at the hearing, you must tell us no later than May 10, 2017 either by email at BartoliJ@hpd.nyc.gov, by telephone at (212) 863-6838, or by mail at the address given above.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and an audiotape of oral comments concerning the proposed rules will be available to the public at Room No. 5-K2, 5th Floor, 100 Gold Street, between 10:00 am and 4:00 pm on weekdays.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and Sec-

tions 23-96(k) and 23-154(d)(3)(v) of the Zoning Resolution authorize HPD to make these proposed rules.

Where can I find the HPD rules? The HPD rules are in title 28 of the Rules of the City of New York.

What rules govern the rulemaking process? HPD must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

On March 22, 2016, the City Council adopted amendments to the Zoning Resolution of the City of New York establishing a Mandatory Inclusionary Housing ("MIH") program which requires new housing developments, enlargements or conversions of more than 10 dwelling units or more than 12,500 square feet of residential floor area constructed in areas designated for MIH in the Zoning Resolution to provide permanently affordable housing to qualified households. MIH areas are designated through the land use review process as part of zoning actions that increase housing capacity. The amendment also established that developments, enlargements or conversions that increase the number of dwelling units by no more than 25 and increase the residential floor area on the zoning lot by less than 25,000 square feet of residential floor area may instead comply with the MIH program requirements by making a contribution to the Affordable Housing Fund, which is defined in section 23-911 of the Zoning Resolution. The text amendment also provided that the amount of such contribution shall approximate the cost of providing affordable floor area in the community district where the MIH Development is located and that HPD shall establish a schedule setting forth the Affordable Housing Fund contribution amounts, to be updated on an annual basis.

The proposed rule amendments add the Affordable Housing Fund contribution schedule for each community district.

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. Section 41-01 of Chapter 41 of Title 28 of the Rules of the City of New York is amended by adding a new definition to be inserted in alphabetical order and to read as follows:

Department of Finance or DOF. "Department of Finance" or "DOF" shall mean the Department of Finance of the City of New York or any successor agency or department thereto.

§ 2. Chapter 41 of Title 28 of the Rules of the City of New York is amended by adding a new Section 41-24 to read as follows:

(a) General Provisions For the Payment of the Affordable Housing Fund Contribution.

(1) Prior to the issuance of a Permit Notice for an MIH Development that is eligible and elects to make a contribution to the Affordable Housing Fund, the following must occur:

(A) Approval of such MIH Development's MIH Application by HPD.

(B) Recordation against the MIH Zoning Lot of a restrictive declaration setting forth the amount of the Affordable Housing Fund contribution and the amount of residential floor area to be constructed at the MIH Development. Such restrictive declaration must be approved in form and in substance by HPD.

(C) Payment to HPD of the full amount of the MIH Development's contribution to the Affordable Housing Fund by a certified check or bank check payable to the New York City Housing Development Corporation.

(2) The Affordable Housing Fund contribution shall be held by HDC or such other depository as HPD designates.

(b) Methodology For Determining the Affordable Housing Fund Contribution.

The amount of the Affordable Housing Fund contribution as listed in the table below is based upon the cost of providing Affordable Floor Area in the community district in which the eligible MIH Development is located. This amount varies by community district to approximate the cost differentials in providing Affordable Floor Area throughout the City of New York, as well as to satisfy the requirements of Zoning Resolution § 23-154(d)(3)(v). HPD uses Department of Finance sales data ("DOF Data") for residential condominium units and, where necessary, for one- to four-unit residential buildings to group together community districts with similar market characteristics ("Fee Tiers"). Each Fee Tier is associated with a different Affordable Housing Fund contribution amount.

(1) Determining Contribution Per Square Foot. The amount of the Affordable Housing Fund contribution per square foot for each Fee Tier is determined by calculating the difference between the Market Price and the Affordable Price for each Fee Tier. However, the amount of the Affordable Housing Fund contribution per square foot can be no less than the approximate maximum per square foot subsidy that HPD and HDC would contribute to newly constructed affordable housing under an affordable housing program serving predominantly low-income households.

(2) Calculating Market Price. Market Price is an approximation of the market price per square foot for a residential development, enlargement or conversion. A Market Price is calculated for each Fee Tier using DOF Data for that Fee Tier. The Market Price for a Fee Tier is equal to the fortieth percentile sales price per square foot for units that are in developments meeting the unit count and maximum square footage eligibility criteria for the Affordable Housing Fund option.

(3) Calculating Affordable Price. Affordable Price is an approximation of the price per square foot of affordable residential floor area. One Affordable Price serves all Fee Tiers. The Affordable Price is equal to the price calculated to be affordable to the mean of the maximum weighted averages of Income Bands associated with each of the options set forth in Zoning Resolution §§ 23-154(d)(3)(i)-(ii) divided by the median size of units in the DOF Data used to determine Market Prices.

(c) Required Amount of Contribution to Affordable Housing Fund.

(1) The Affordable Housing Fund contribution made by an MIH Development shall equal the mean amount of Affordable Floor Area such MIH Development would have otherwise been required to provide under Zoning Resolution §§ 23-154(d)(3)(i)-(ii) multiplied by the applicable amount of contribution per square foot in effect at the time the MIH Application is submitted to HPD for the community district in which the MIH Development is located. The Affordable Housing Fund contribution per square foot of Affordable Floor Area for each community district is as follows:

<u>Fee Tier</u>	<u>Community District</u>	<u>Amount of Affordable Housing Fund Contribution Per Square Foot</u>
<u>1</u>	<u>101 102 103 104 105 106 107 108</u>	<u>\$1,075</u>
<u>2</u>	<u>301 302 306 402</u>	<u>\$605</u>
<u>3</u>	<u>109 110 111 303 304 307 308 401 406</u>	<u>\$535</u>
<u>4</u>	<u>112 208 309 310 311 312 313 314 315 403 404 405 407 408 409 411</u>	<u>\$280</u>
<u>5</u>	<u>201 202 203 204 205 206 207 209 210 211 212 305 316 317 318 410 412 413 414 501 502 503</u>	<u>\$165</u>

(2) HPD shall update the schedule of Affordable Housing Fund contributions no later than July 1st of each year.

Commissioner Maria Torres-Springer

April 6, 2017

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Affordable Housing Fund Contributions

REFERENCE NUMBER: 2016 RG 109

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: February 13, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Affordable Housing Fund Contributions

REFERENCE NUMBER: HPD-32

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Brady Hamed

Mayor's Office of Operations

February 13, 2017

Date