

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing the Schedule of Contribution Amounts to the Mandatory Inclusionary Housing Affordable Housing Fund

NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) by Section 1802 of the New York City Charter and Sections 23-96(k) and 23-154(d)(3)(v) of the Zoning Resolution of the City of New York, and in accordance with the requirements of Section 1043 of the City Charter, the Department of Housing Preservation and Development is amending its rules governing the Mandatory Inclusionary Housing program.

A notice of proposed rulemaking was published in the City Record on April 6, 2017. A public hearing was held on May 24, 2017.

Statement of Basis and Purpose

On March 22, 2016, the City Council adopted amendments to the Zoning Resolution of the City of New York ("Zoning Resolution") 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 rule amendments establish the Affordable Housing Fund contribution schedule for each community district and describe the methodology that HPD uses for setting such schedule.

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 41-23 to read as follows:

§ 41-23 Reserved.

§ 3. 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, HPD shall establish a minimum Affordable Housing Fund contribution amount per square foot based on 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 equals 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>\$260</u>

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