

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (“HPD”) is proposing amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments).

When and where is the Hearing? HPD will hold a public hearing on the proposed rules online. The public hearing will take place at 10:00 AM – 11:00 AM on Thursday, December 17, 2020. To participate in the public hearing, enter the Webex URL:
<https://nychpd.webex.com/nychpd/onstage/g.php?MTID=e007f0d189812aad3044a17e376d16602>

If prompted to provide a password or number, please enter the following:

Meeting Number: 173 496 0660 Password: 2020

You may also join the hearing via device audio or dial-in via phone.

To join by video system:

Dial 1734960660@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

To dial-in via phone, please use the following dial in number and participant code:

Phone: (646) 992-2010 Access Code: 173 496 0660 Password (if requested): 2020

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

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 comments to rules@hpd.nyc.gov.
- **Mail.** You can mail comments to Julie C. Walpert, Assistant Commissioner for Housing Supervision, 100 Gold Street, Room 7L2, New York, NY 10038.
- **Fax.** You can fax written comments to HPD at Assistant Commissioner Julie C. Walpert at (212) 863-5048.

- **By Speaking at the Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 863-6500 or by emailing at mitchell-lama@hpd.nyc.gov by December 16, 2020 at 5:00 PM. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? All written comments must be submitted on or before December 17, 2020.

What if I need assistance to participate in the Hearing? You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at mitchell-lama@hpd.nyc.gov. You may also tell us by telephone at (212) 863-6500. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 10, 2020.

This hearing has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access for persons with vision impairments.

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 rule will be available to the public.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and subdivision (3) of section 32 of the Private Housing Finance Law authorize HPD to make these proposed rules. The proposed rules were included in HPD's regulatory agenda.

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

The proposed rule amendments to Chapter 3 of Title 28 of the Rules of the City of New York revise and clarify many aspects of Mitchell-Lama developments. Many of the proposed rule amendments address repeated shareholder concerns regarding transparency and the need for increased oversight of the City's Mitchell-Lama portfolio. Other proposed amendments implement technical changes to further improve HPD's

oversight of the operation of this critical affordable housing resource in the City of New York.

Specifically, the proposed rule amendments:

- Require applicants surrendering their applications for Mitchell-Lama housing company developments to an eligible spouse, sibling or child to appear in person at the housing company's management office and provide a signed and notarized surrender statement.
- Prohibit veterans and their surviving spouses from using the veteran's preference more than once for admission to Mitchell-Lama housing so that the preference is used for the veteran to obtain housing and not as a tool for veterans to secure housing for others by multiple uses of the preference.
- Revise the Mitchell-Lama occupancy standards to ensure that they are gender neutral and more compatible with the occupancy standards employed by HPD Marketing for other affordable housing developments.
- Mandate any applicant appealing his or her denial of succession rights to continue to pay for the use and occupancy of the apartment while the appeal is pending.
- Authorize HPD to direct the housing company to remove any of its employees or to direct the managing agent to remove any of its onsite employees where any such employee has violated the Private Housing Finance Law and/or applicable rules and directives or has otherwise failed to act in the best interests of the housing company.
- Require the managing agent of each municipally-aided mutual company to post on a website created by each respective mutual company retainer agreements, contracts for services, construction and repairs, and all board of directors' meetings minutes.
- Obligate members and officers of the Board of Directors to comply with the Private Housing Finance Law as well as HPD rules and HPD directives.
- Require all Board of Directors election documents to use standardized HPD forms for items such as candidate selection forms, proxies, ballots and notices, and to submit to HPD for prior approval.
- Authorize HPD to approve the housing company's attorney as an alternative election monitor.

- Require mutual companies to complete the preparation of a written feasibility study within 180 days of the certified resolution and to submit the offering plan to the Attorney General's Office no later than one year after the shareholders' expenditure authorization so that information in these documents does not become stale and is temporally-related to the authorizations provided by shareholder votes.
- Require managing agents to comply with HPD's training manuals as well as HPD rules in all actions related to the re-renting of units or resale of shares in Mitchell-Lama housing developments.
- Mandate that the Board of Directors provide HPD's Bill of Rights and Obligations to incoming tenants and shareholders as well as posting it in a conspicuous place in the lobby of every building.

Section 1. Paragraph (3) of subdivision (h), paragraph (2) of subdivision (i), paragraph (1) of subdivision (m) and subparagraph (iii) of paragraph (8) of subdivision (p) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York, are amended to read as follows:

(3) Applications shall be consecutively numbered and dated upon receipt by the housing company or shall be numbered pursuant to order of selection by lottery, as applicable. The housing company or its managing agent shall provide an applicant with a dated receipt or other form of documentation setting forth the date and/or waiting list number of the application. Applicants must meet the occupancy standards at the time of application and at the time the apartment is offered. No applicant may be placed on more than one waiting list by bedroom size in a particular housing company development. Applications are only transferable to spouses, siblings, or children who are at least eighteen years of age as of the date of the applicant's initial application, provided that (i) such spouse's, sibling's, or children's names appeared on the applicant's initial application, and (ii) the applicant appears in person in the housing company's management office and provides a signed and notarized statement declaring surrender of his or her application to such eligible spouse, sibling or child. Each applicant shall only be entitled to one entry per lottery for a housing company development. Multiple entries shall result in disqualification from such lottery. Furthermore, an applicant whose name is selected in a lottery cannot be included in the family composition of any other applicant who is selected in the same lottery for that particular housing company development. Such inclusion in multiple selected family compositions also shall result in disqualification of all involved parties from such lottery.

(2) *Second priority.* Pursuant to § 31(7) of the Private Housing Finance Law, preference

in admission to a project with an open waiting list, as determined by HPD, shall be given to persons who are veterans as such term is defined pursuant to § 85 of the Civil Service Law or their surviving spouses, and for projects with a closed list, as determined by HPD, preference shall be given upon the opening of the waiting list to such veterans or surviving spouses that are selected in the lottery for such opened waiting list. This preference in admission shall only be provided to veterans or surviving spouses whose names appear on the waiting list as the applicants of record and who have identified themselves as the heads of household on their applications. [The] No veteran or surviving spouse shall be entitled to benefit from a preference for admission pursuant to this paragraph more than one time and, furthermore, the inclusion of a veteran or surviving spouse as a member of the household shall not entitle any other applicant of record to this preference in admission.

(1) Apartments shall be offered for occupancy as they become vacant in accordance with the standards set forth below (occupancy standards shall be applied without regard to the pending birth or pending adoption of a child):

(i) Efficiency (no bedrooms) and one (1) bedroom apartments. [(no bedrooms). One (1) or two (2) persons.

(ii) One (1) bedroom apartments. Two (2) or] One (1) to three (3) persons shall occupy an efficiency (no bedrooms) or a one-bedroom apartment. [A single person may occupy a one-bedroom apartment if the development has less than ten percent (10%) efficiency apartments.]

[(iii)] (ii) Two (2) bedroom apartments. [No fewer than three] Three (3) to five (5) persons, [a brother and a sister] two siblings who are both adults, or a parent or guardian with at least one child.

[(iv)] (iii) Three (3) bedroom apartments. [No fewer than (A) five (5)] Four (4) to seven (7) persons [, (B)] or a parent[(s)] or guardian[(s)] with two children [of the opposite sex, (C) a household of three adults with one child where at least one adult is the parent or guardian of such child, or (D) a household of one parent or guardian and his or her three children shall occupy a three-bedroom apartment].

(iv) Four (4) bedroom apartments. [No fewer than six (6)] Five (5) or more persons.

[(vi)] (v) All apartments. In all cases the tenant/cooperator named on the lease must be at least eighteen years of age and must actually occupy the apartment as his or her primary residence.

[(vii)] (vi) HPD may grant waivers of occupancy standards for medical reasons.

(iii) Pending the agency's determination, the applicant may continue in occupancy and [shall be required to] must pay for the use and occupancy of the apartment in an amount equal to the monthly rental/carrying charge paid by the vacating tenant/cooperator. Furthermore, any applicant who files an appeal from an agency determination denying such applicant succession must pay for the use and occupancy of the apartment in an amount equal to the monthly rental/carrying charge paid by the vacating tenant/cooperator, while such appeal is pending.

§ 2. Paragraph (1) of subdivision (e) of Section 3-07 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(1)The number, types, qualifications and rate of pay of the employees required for the proper maintenance and operation of the housing company's properties shall be subject to review by HPD and the housing company [shall]must submit staffing plans to HPD for its review and approval, if required by HPD. HPD shall require the housing company to remove any housing company employee who violates the Private Housing Finance Law and/or applicable rules and directives.

§ 3. Section 3-07 of Chapter 3 of Title 28 of the Rules is the City of New York is amended by adding a new subdivision (h) to read as follows:

(h). The managing agent of each municipally-aided mutual company shall post on a website created for each mutual company the following documents: (a) retainer agreements,(b) contracts for building services, construction and repairs, and (c) all minutes from board of directors' meetings.

§ 4. Subdivision (d) of Section 3-14 of Title 28 of the Rules of the City of New York is amended by adding a new paragraph (9), subparagraph (i) of paragraph (2) of subdivision (h) of such section is amended, the opening paragraph of paragraph (6) of subdivision (i) of such section is amended, and a new subparagraph (iii) is added to paragraph (6-a) of such subdivision, all to read as follows:

(9) Members and officers of the Board of Directors are obligated to ensure that the actions of the Board of Directors and the operations of the housing company comply with the Private Housing Finance Law and/or applicable rules and directives.

(i) All elections of directors for a mutual housing company that has not been refinanced under Section 223(f) of the National Housing Act must be supervised by an independent election company [or the mutual housing company's attorney and/or accountant]. No fewer than forty-five (45) days prior to conducting the election, the mutual housing company must submit to HPD in writing (A) the name of the independent election company and the proposed independent election company agreement, [or, alternatively, with the approval of HPD, the name of the housing company's attorney and/or accountant who will be supervising the election], (B) [a written description of the procedures for the nomination of directors and for the intended election] for HPD's approval, all proposed election documents on the forms provided by HPD, including, but not limited to, candidate selection forms, proxy forms, ballots and notices, and (C) drafts of all other documents related to the election. Notwithstanding the foregoing, HPD may approve the supervision of the election by the housing company's attorney.

(6) Mutual Housing companies - special meeting. A board of directors of a mutual housing company considering dissolution and/or reconstitution pursuant to §35 [shall]must call a special meeting in conformance with the mutual housing company by-law requirements for the purpose of ascertaining shareholder interest in dissolution and/or reconstitution. The secretary of the board of directors [shall]must submit to HPD a certified resolution stating that, unless the by-laws of the company mandate a greater affirmative vote, not less than two-thirds (2/3) of the dwelling units in such mutual housing company approved an expenditure of funds in a specified amount not to exceed \$100,000 for the purpose of the preparation of a written feasibility study that [shall]compares remaining a mutual housing company with dissolving and reconstituting as a private cooperative corporation organized pursuant to the Business Corporation Law or as an Article XI housing development fund company, organized pursuant to Article XI of the Private Housing Finance Law. Such written feasibility study [will be] must be completed within one hundred eighty days of the certified resolution and thereafter distributed to each shareholder no later than sixty days after its preparation is completed [, unless the by-laws of the company mandate a greater affirmative vote]. Each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws. Said resolution shall include language as follows:

(iii) The offering plan must be submitted to the office of the Attorney General no later than three hundred sixty-five days after the shareholders have authorized the expenditure of funds for its preparation.

§ 5. Subdivision (c) of Section 3-16 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding a new paragraph (7) and paragraph (6) of subdivision (e) of such section is amended, to read as follows:

(7) Notwithstanding anything to the contrary contained in this section, HPD is authorized to require the replacement of any employee of the managing agent whose job duties are performed on the premises of the rental or mutual housing company development and who has violated the Private Housing Finance Law and/or applicable rules and directives governing such housing developments.

(6) in accordance with HPD's training manual for managing agents, submit tenant/cooperator applications to HPD for approval; maintain waiting lists in accordance with HPD rules and utilize such lists in the re-rental of vacated apartments or resale of shares in a mutual housing company; perform all services in connection with the processing of applications resulting from such reletting or resale;

§ 6. Section 3-17 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding a new subdivision (f) to read as follows:

(f) *Bill of Rights*. No later than thirty (30) days after the effective date of the rule amendment that added this subdivision (f) and with every subsequent rental or occupancy agreement entered into with a new tenant/cooperator, the Board of Directors must distribute HPD's Bill of Rights and Obligations and must also post it in a conspicuous place on the lobby floor of each building.

Commissioner Louise Carroll

November 13, 2020

**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: Amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments).

REFERENCE NUMBER: 2020 RG 032

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

Date: July 2, 2020

Acting Corporation Counsel

**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: Amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments).

REFERENCE NUMBER: HPD-71

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/ Francisco X. Navarro

Mayor's Office of Operations

July 6, 2020

Date