

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by Sections 1043 and 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, HPD is adopting amendments to Chapter 41 of Title 28 of the Rules of the City of New York. HPD determined, pursuant to New York City Charter section 1043(e), that a public hearing on the proposed rule amendment would serve no public purpose. A notice of proposed rulemaking was published in the City Record on April 20, 2021.

Statement of Basis and Purpose

The Mandatory Inclusionary Housing (“MIH”) program 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 of the City of New York (“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 MIH program allows 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 to instead make a contribution to the Affordable Housing Fund, which is defined in section 23-911 of the Zoning Resolution. The contribution amount must approximate the cost of providing affordable floor area in the community district where the MIH Development is located.

HPD established the methodology for calculating the Affordable Housing Fund contribution amounts and the schedule setting forth those amounts in Section 41-24 of Chapter 41 of Title 28 of the Rules of the City of New York. The Zoning Resolution requires this schedule to be updated annually. In order to enable HPD to perform this ministerial annual schedule update in a more efficient manner, the adopted rule amendment provides that the annual update of the schedule is published on the HPD website rather than in the Rules of the City of New York.

In addition, the rule amendment spells out the methodology for assigning community districts to fee tiers. Because the contribution amounts will no longer be reflected in HPD rules, HPD considers it important that parties affected by the rule understand the methodology HPD uses to complete the annual schedule, including how fee tiers are determined.

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. The heading of Section 41-24 of Chapter 41 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 41-24 MIH Affordable Housing Fund Contribution.

§ 2. Subdivision b of Section 41-24 of Chapter 41 of Title 28 of the Rules of the City of New York is amended by renumbering paragraphs 1 through 3 as paragraphs 2 through 4 and adding a new paragraph 1, to read as follows:

(1) Assigning Community Districts to Fee Tiers. The median sales price per square foot for each community district is calculated using DOF Data. Community districts are then grouped together into fee tiers using statistical clustering of their respective median sales price per square foot. If applicable, HPD will also take into account any known market abnormalities and weigh for geographic proximity with comparable sales in neighboring community districts.

§3. Subdivision c of Section 41-24 of Chapter 41 of Title 28 of the Rules of the City of New York is amended to read as follows:

(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 shall be set forth in a schedule published on the HPD website that is updated no later than July 1st of each year [is as follows:

Fee Tier	Community District	Amount of Affordable Housing Fund Contribution Per Square Foot
1	101 102 103 104 105 106 107 108	\$1,165
2	110 301 302 306 308 402	\$735
3	109 111 303 307 401	\$470
4	112 208 309 310 311 312 313 314 315 403 404 405 406 407 408 409 411	\$325
5	201 202 203 204 205 206 207 209 210 211 212 304 305 316 317 318 410 412 413 414 501 502 503	\$230

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

Commissioner Louise Carroll
May 21, 2021