

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (“HPD”) proposes amendments to Section 41-24 of Chapter 41 of Title 28 of the Rules of the City of New York to revise the process of updating the schedule of Affordable Housing Fund contributions for the Mandatory Inclusionary Housing program.

When and where is the Hearing? HPD has determined, pursuant to New York City Charter section 1043(e), that a public hearing on the proposed rule would serve no public purpose.

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.
- **Speaking at the Hearing.** HPD has determined, pursuant to New York City Charter section 1043(e), that a public hearing on the proposed rule would serve no public purpose.

Is there a deadline to submit written comments? All written comments must be submitted on or before May 20, 2021.

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 comment deadline, copies of all comments submitted online and copies of all written 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 Sections 23-96(k) and 23-154(d)(3)(v) of the Zoning Resolution of the City of New York authorize HPD to make this proposed rule amendment. This proposed rule was 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(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

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 proposed rule amendment would provide 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 proposed rule amendment would spell out the methodology for assigning community districts to fee tiers.

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
April 20, 2021

**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: 2020 RG 079

REFERENCE NUMBER: Amendment of Affordable Housing Fund Contribution Schedule Rule

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: March 19, 2021

**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: Amendment of Affordable Housing Fund Contribution Schedule Rule

REFERENCE NUMBER: HPD-76

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

March 19, 2021
Date