

## 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 to 11:00 AM on March 14, 2023. To participate in the public hearing, enter the Webex URL or use the QR code below:  
<https://nychpd.webex.com/nychpd/onstage/g.php?MTID=e7efba69811157873f1e36d374b95609d>



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

Meeting Number: 23359024752 Password: 2023

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

To join by video system:

Dial [23359024752@webex.com](mailto:23359024752@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: 23359024752 Password (if requested): 2023

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](mailto: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) 863-6214 or by emailing at [mitchell-lama@hpd.nyc.gov](mailto:mitchell-lama@hpd.nyc.gov) by March 13, 2023, 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 March 14, 2023.

**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](mailto:mitchell-lama@hpd.nyc.gov). You may also tell us by telephone at (212) 863-6214. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by March 7, 2023. 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 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 rule amendments address repeated shareholder concerns regarding transparency and the need for increased oversight of the City's Mitchell-Lama portfolio. Other amendments implement State amendments to the Private Housing Finance Law adopted by Chapter 749 of 2021 and Chapter 167 of 2022, which established certain voting and election procedures and established thresholds for votes to approve dissolution. The rule also makes 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 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.
- Provide that household members, non-resident family members and any other parties do not have occupancy rights to a vacated apartment once an internal transfer is effectuated.
- 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 are more closely aligned with the Mitchell-Lama occupancy standards for State-aided Mitchell-Lama developments.
- Reinstates the provision that failure to appear on the required income affidavits creates a rebuttable presumption that a family member seeking succession did not reside in the Mitchell-Lama dwelling unit as his or her primary residence.
- Authorize waivers of occupancy standards for internal transfers of tenants/cooperators currently residing in a Mitchell-Lama development whose household composition renders them eligible for a smaller apartment in order to free the larger units for families.
- Require 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, consistent with any internal grievance procedures.
- Adjust the rule provisions related to income verification for admission to a Mitchell-Lama development to ensure that an applicant's anticipated income can be considered.
- Prohibit spouses and domestic partners from purchasing and/or owning shares in more than one Mitchell Lama mutual housing company development.
- Require the managing agent to notify HPD if the housing company makes payments to and/or incurs charges from any vendor or service provider that in the aggregate equal or exceed \$100,000 in any twelve-month period and

thereafter prohibits further charges to be incurred without the prior written approval of HPD.

- Require the Board of Directors and/or managing agent of each municipally-aided mutual company to post on a website created by each respective mutual company redacted retainer agreements, redacted contracts for services, construction and repairs, board resolutions (including how each board member voted), board of directors' meetings minutes that have been redacted to remove any confidential information, any request by the mutual company to the supervising agency and any final resolution regarding such request, when the request relates to a change in rules, a change in its real estate taxation, in a refinancing, financing being offered by the supervising agency, or any other agency or, a proposed dissolution and reconstitution, and any communications between the New York State Office of the Attorney General and such mutual company.
- Require housing companies to make the transcripts from rent/carrying charge increase hearings available to tenant/cooperators for review and to post such transcripts on a website created and maintained by the housing company.
- 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 and require members of the Board of Directors to attend training sessions.
- Raise the minimum threshold for all votes related to the dissolution and/or reconstitution of a Mitchell-Lama housing company from two-thirds (2/3) of dwelling units to eighty percent (80%) other than the votes for purposes of dissolving and reconstituting a mutual housing company as a housing development fund company organized pursuant to Article XI of the Private Housing Finance Law. The latter will continue to have a two-thirds (2/3) threshold. This higher threshold ensures that the momentous decision to privatize and to completely change the standards by which the development will operate is supported by a larger number of cooperators.
- Eliminate usage of direct mail ballots in votes related to dissolution and/or reconstitution pursuant to section 35 of the Private Housing Finance Law and also eliminate the use of proxies in Board of Director elections.
- Prohibit the use of funds from the operating budget of a mutual housing company to pay for any of the expenses associated with dissolution and/or reconstitution pursuant to section 35 of the Private Housing Finance Law, and require such funds to be raised by a special assessment approved by eighty percent (80%) of the dwelling units in such mutual housing company, or, in the case of special assessments for feasibility studies and Article II to XI conversions, approval of two-thirds (2/3) of the dwelling units.

- Prohibit new votes related to dissolution and/or reconstitution less than five years from the failure of any such votes to obtain the requisite support. However, new votes related to conversions from limited-profit housing company developments to housing development fund companies cannot be held less than three years after any such votes failed to obtain the requisite support.
- Require all Board of Directors election documents to use standardized HPD forms for items such as candidate selection forms, ballots and notices, and to submit to HPD for prior approval.
- Prohibit the housing company's attorney or accountant from serving as the 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 directives as well as HPD rules in all actions related to the re-renting of units or resale of shares in Mitchell-Lama housing developments.
- Prohibit charges to shareholder and/or tenants' groups, committees or other shareholder and/or tenants' organizations for the use of a community or social room for organizational events.
- Change references from disposable income to annual aggregate income with respect to the Senior Citizen Rent Increase Exemption ("SCRIE") in order to be consistent with the rest of the chapter.

Section 1. Paragraph (3) of subdivision (h), the opening paragraph of paragraph (1) of subdivision (i), paragraph (2) of subdivision (i), paragraph (1) of subdivision (m), and paragraph (3) 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, and subparagraphs (ii) and (iii) of paragraph (6) of subdivision (p) of such section are renumbered subparagraphs (v) and (vi), respectively, and clauses (i-1), (i-2), and (i-3) of subparagraph (i) of such paragraph are renumbered subparagraphs (ii), (iii), and (iv), respectively:

(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.

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(1) *First priority.* Tenant/cooperators currently residing in a development whose household composition renders them eligible for a smaller apartment shall be given first priority for an internal transfer. Tenant/cooperators currently residing in a development whose household composition renders them eligible for a larger apartment shall be given first priority for the first three out of every four apartments that become available and the fourth such apartment that becomes available shall be set aside and offered to an applicant on the external waiting list in accordance with the provisions contained in paragraph (3) of this subdivision. No priority shall be given to residents seeking additional apartments for members of their household, or for non-resident family members or any other parties. Furthermore, no members of the household, non-resident family members or any other parties shall have occupancy rights to the vacated apartment once the transfer is effectuated. The housing company shall maintain an internal transfer list by apartment size, listed in chronological order by date of receipt of transfer request. If, at any time, a tenant/cooperator's name has been omitted from the internal transfer list in error and said tenant/cooperator can present adequate documentation satisfactory to the housing company or its managing agent to substantiate an earlier request for a transfer, said tenant/cooperator's name shall be inserted into the internal list in the corrected date order. Insertions to the internal transfer list shall be submitted to HPD for prior written approval.

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(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.

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(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 persons, a brother and a sister who are both adults, or a parent or guardian with at least one child] Two (2) to four (4) persons.

[(iv)] (iii) Three (3) bedroom apartments. [No fewer than (A) five (5)] Four (4) to six (6) persons [, (B) 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) to eight (8) persons.

(v) Five (5) bedroom apartments. Seven (7) to ten (10) persons.

(vi) 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) HPD may grant waivers of occupancy standards for medical reasons and for internal transfers of tenant/cooperators currently residing in a development whose household composition renders them eligible for a smaller apartment.

(3) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if the tenant/cooperator has permanently vacated the apartment, any member of such tenant/cooperator's family, who has resided with the tenant/cooperator in the apartment as a primary residence, as determined by § 3-02 (n)(4) of these rules, for a period of not less than two years immediately prior to the tenant/cooperator's permanent vacating of the apartment, and whose name is listed on any income documentation submitted by such tenant/cooperator to the Department or to any other governmental agencies (for example: income affidavits, recertifications or Section 8 forms), for at least the two consecutive annual reporting periods immediately prior to the tenant/cooperator's permanent vacating of the apartment or where such person seeking succession rights is a senior citizen or disabled person, for a period of not less than one year immediately prior to the tenant/cooperator's permanent vacating of the apartment, and has appeared on the such income documentation for at least the reporting period immediately prior to the permanent vacating of the apartment by the tenant/cooperator, or from the inception of the tenancy or commencement of the relationship if for less than such periods, and the apartment was and continues to be the primary residence of the member of the tenant/cooperator's family that resided with such tenant/cooperator, may request to be named as a tenant/cooperator on the lease and where applicable on the stock certificate. The failure of the family member who is seeking to succeed to possession of the apartment to appear on the appropriate income affidavits creates a presumption that he or she did not reside in the apartment as a primary residence. In the event that HPD has authorized the housing company not to collect surcharges based on income documentation, the family member shall be asked to provide other evidence of occupancy for the required period of time. The burden of proof is on said family member to show use of the apartment as his or her primary residence during the required period to be eligible to succeed to possession.

§ 2. Paragraph (2) of subdivision (a) of Section 3-03 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as [reported in the New York State income tax return] verified in accordance with §3-02(l) of this chapter, plus the total income of each other member of the household, excluding therefrom (i) the income of each additional wage earner up to \$20,000 or such amount as determined by State law, and (ii) such personal exemptions and deductions for medical expenses as are actually taken by each tax paying occupant



on the New York State tax return. However, the income of a household member, under 21 years of age, who is a full time student shall not be included in the computation of such annual income.

§ 3. Section 3-06 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding a new subdivision (e) to read as follows:

e. *Prohibition Against Ownership of More than One Dwelling Unit.* Notwithstanding anything to the contrary contained herein, spouses and domestic partners shall be prohibited from purchasing and/or owning cooperative shares in more than one dwelling unit in any Mitchell-Lama mutual housing company development.

§ 4. Paragraph (8) of subdivision (b) and paragraph (1) of subdivision (e) of Section 3-07 of Chapter 3 of Title 28 of the Rules of the City of New York are amended to read as follows:

(8) In the event that any director, officer, shareholder, employee or agent of any housing company shall be directly or indirectly connected with any person, firm or corporation which may submit any bid, or to whom any contract is proposed or awarded, pursuant to the provisions of paragraph (2) or [(5)] (6) hereof, a statement setting forth the nature of such connection shall be included in the submission to HPD and shall be made a part of the minutes of the meeting wherein the contract was approved.

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(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. The housing company shall remove any housing company employee who violates the Private Housing Finance Law and/or applicable rules and directives, consistent with any internal grievance procedures.

§ 5. Section 3-07 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding a new paragraph (2-a) to subdivision (b) thereof and a new subdivision (h) to read as follows:

(2-a) Notwithstanding anything to the contrary in this subdivision (b):

- (i) the managing agent must notify HPD if the housing company makes payments to and/or incurs charges from any vendor or service provider that in the aggregate equal or exceed \$100,000 in any twelve-month period. Such notification shall be in writing and must be made no more than seven days after such payments and/or incurred charges reach the \$100,000 limit; and
- (ii) upon a housing company making payments to and/or incurring charges from any vendor or service provider that in the aggregate equal or exceed \$100,000 in any twelve-month period, no further charges may be incurred without the prior written approval of HPD.

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(h) The Board of Directors and/or managing agent of each municipally-aided mutual company shall post on a website created for each mutual company the following documents: (1) redacted retainer agreements, (2) redacted contracts for building services, construction and repairs, (3) all board resolutions (including how each board member voted) and all minutes from board of directors' meetings that have been redacted for confidential information, (4) any request by the mutual company to the supervising agency and any final resolution regarding such request, when the request relates to a change in rules, a change in its real estate taxation, a refinancing or financing being offered by the supervising agency, or any other agency or a proposed dissolution and reconstitution, (5) any deficiency letters issued by the Office of the Attorney General to the mutual company regarding an offering plan for dissolution and reconstitution of the mutual company, any deficiency letters issued by the Office of the Attorney General to the mutual company regarding a proxy statement or any other documents permitted by the Attorney General instead of such offering plan, and any of the mutual company's resubmissions of such offering plan or proxy statement or any other documents permitted by the Attorney General instead of such offering plan in response to such deficiency letters issued by the Office of the Attorney General, and (6) any offer of financing from the supervising agency or any other agency to the mutual company.

§ 6. Paragraph (5) of subdivision (d) of Section 3-10 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(5) A record of the proceedings shall be kept, which shall include, among other things, the application, the notice to tenants, the written and documentary material

received, including comments received by HPD. A verbatim transcript of the hearing shall be made, [and] kept as a record of the public hearing and made available for review by tenant/cooperators as well as posted to a website created and maintained by the housing company. The cost of such transcript shall be borne by the housing company.

§ 7. Subdivision (d) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding new paragraphs (9) and (10), 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, subparagraph (i) of paragraph (6-a) of such subdivision is amended, a new subparagraph (iii) is added to paragraph (6-a) of such subdivision, paragraph (7) of such subdivision is amended, subparagraph (ii) of paragraph (15) of such subdivision is amended, and subdivision (j) of such section is amended, 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.

(10) All members of the Board of Directors must complete two hours of training courses for which the content has been approved by HPD within twelve months of being elected; provided, however, that members of the Board of Directors who were elected before the effective date of the rule that added this amendment must complete such training courses within twelve months of such effective date. All members of the Board of Directors must then complete such training courses every three years after their original training courses.

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(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, ballots and notices, and (C) drafts of all other documents related to the election.

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(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 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 compare] 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 include the different financing options presented to the housing company and 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:

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(i) Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting shall be convened by the board of directors of the mutual housing company no later than ninety days after the written feasibility study has been distributed to each shareholder to authorize the (A) expenditure of \$\_\_\_\_\_ for the preparation and submission to the office of the Attorney General of the State of New York of a private cooperative or condominium offering plan for the housing project, and (B) submission to HPD of the mutual housing company's notice of its intention to dissolve and/or reconstitute ("Notice of Intent"). Eligible voters for purposes of a quorum and for a vote on preparation and submission of such plan and such Notice of Intent shall be persons named on the stock certificate. Preparation and submission of such plan and such Notice of Intent requires approval of [two-thirds (2/3)] eighty percent (80%) of the dwelling units in such mutual housing company. Each such 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. On or after the effective date of [this amendment to this subparagraph (i)] Chapter 749 of the Laws of 2021, as amended by Chapter 167 of the Laws of 2022, any other expenditures in furtherance of dissolution and/or reconstitution that have not already either been authorized pursuant to an agreement entered into by the board of directors or received the express prior approval of the shareholders shall, before the board of directors is authorized to allocate such funds in furtherance of dissolution and/or reconstitution, require the express prior approval of [a majority] eighty percent (80%) of the dwelling units in such mutual housing company [before the board of directors is authorized to allocate such funds in furtherance of dissolution and/or reconstitution]. For purposes of this subparagraph (i), "express prior approval" shall mean that both the purpose of the expenditure and the exact dollar amount of such expenditure are or have been approved.

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- (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.

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(7) Special meeting to authorize dissolution and/or reconstitution of mutual housing companies. Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting to authorize dissolution and/or reconstitution shall be convened by the board of directors of the mutual housing company after the acceptance by the office of the Attorney General of the State of New York of the filing of the offering plan pertaining to the proposed transfer from the mutual company to a private cooperative or condominium corporation. Eligible voters for purposes of a quorum and for the vote on dissolution and/or reconstitution shall be persons named on the stock certificate. Dissolution and/or reconstitution of the mutual housing company requires approval of [two-thirds (2/3)] eighty percent (80%) of the dwelling units in such mutual housing company. Each such 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.

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- (ii) such mutual housing company shall (A) call a special meeting in conformance with its by-law requirements to conduct a vote in which not less than [a majority] two-thirds (2/3) of the dwelling units [represented at such special meeting] approve the preparation

of a draft proxy statement and the submission to HPD of such mutual housing company's notice of its intention to dissolve and reconstitute as a housing development fund company, and (B) after such draft proxy statement has been prepared, submit the draft proxy statement in support of the plan of dissolution and reconstitution to the office of the Attorney General of the State of New York and, simultaneously with such submission, deliver copies of such draft proxy statement to HPD and to each of such mutual housing company's cooperators by ordinary mail or distribution under each apartment door;

(j) *Proxies, [Direct Mail Ballots and] Absentee Ballots, Funding and Failed Votes.*

(1) With HPD's approval, a mutual housing company may require a standard form and procedure for the casting of [proxies or] absentee ballots in any matter requiring a shareholder vote.

(2) [Notwithstanding anything to the contrary contained herein, in] In any vote conducted pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision, voting by proxy shall not be permitted. However, HPD may approve, in writing, a standard form [direct mail] absentee ballot for transmission to the independent election company engaged to conduct any votes pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision. Such standard form of [direct mail] absentee ballot shall be invalidated by the shareholder executing such ballot if such shareholder appears to vote in person in any vote conducted pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision.

(3) Notwithstanding anything to the contrary contained herein, no funds from the operating budget of a mutual housing company shall be used to pay for any of the expenses associated with the requirements of subdivision (i) of this section, including, but not limited to, legal services, related to the evaluation of, preparation for, or execution of dissolution and/or reconstitution pursuant to section 35 of the Private Housing Finance Law, and shall instead be raised by a special assessment approved by eighty percent (80%) of the dwelling units in such mutual housing company, or, in the case of a feasibility study or reconstitution as a housing development fund company pursuant to paragraph fifteen of subdivision (i), two-thirds (2/3) of such dwelling units. The total dollar amount of the proposed assessment and the dollar amount per dwelling unit that will be imposed to fund any such action if it is approved shall be specified in all votes by shareholders required by subdivision (i) of this section and no mutual housing company shall increase the amount of the approved assessment without conducting a further vote subject to the same approval requirement of eighty percent (80%) or two-thirds (2/3), as applicable.

(4) A vote conducted pursuant to paragraphs six, six-a or seven of subdivision (i) of this section or a vote conducted pursuant to paragraph three of this subdivision may not occur within five years of a vote undertaken pursuant to such subdivisions that fails to pass, provided that a vote conducted pursuant to paragraph fifteen of subdivision (i) of

this section and any related assessment vote conducted pursuant to paragraph three of this subdivision may not occur within three years of a vote that fails to obtain the required approval of two-thirds (2/3) of the dwelling units in a mutual housing company.

§ 8. 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), paragraph (6) of subdivision (e) of such section is amended, and subparagraph (v) of paragraph (3) of subdivision (f) of such section is amended, all 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.

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(6) in accordance with HPD's directives 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;

\*\*\*\*

(v) Printing of leases, notices and advisories to tenant/cooperators; [proxies] and [other] forms for Board elections

§ 9. Subdivision (d) of Section 3-17 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(d) *Availability of community space.* (1) The housing company or its managing agent shall not unreasonably withhold permission for use of the development's community space from its residents. A reasonable charge may be made for janitorial or related services. A deposit may be required for the use of the space which is refundable if the premises is free of acts of vandalism.

(2) The housing company shall, in consultation with the Tenants Association, establish priorities for the use of the community space.

(3) If other organizations of tenants exist within a housing development, such as, for example, a senior citizen's club or garden club, the housing company through its managing agent, should make every effort to accommodate the needs of these

organizations by providing an opportunity for use of the community space available. While the Tenants Association has first priority with regard to meeting space, it should not be to the exclusion of all other tenant organizations in the development.

(4) There is no obligation for the housing company to make community space available for fund-raising events or for organizations whose membership consists primarily of non-tenants. The use of the community room for these purposes should be at the discretion of the housing company in consultation with the Tenants Association.

(5) Notwithstanding anything to the contrary contained herein, shareholder and/or tenants' groups, committees or other shareholder and/or tenants' organizations shall have the right to meet for organizational events without being required to pay a fee, in any location on the premises of a limited-profit housing company development that is devoted to the common use of all shareholders and/or tenants, including a community or social room where use is normally subject to a fee, provided that any such meeting shall be conducted in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities.

§ 10. Paragraphs (2) and (3) of subdivision (b) of Section 3-19 of Chapter 3 of Title 28 of the Rules of the City of New York are amended to read as follows:

(2) The [total disposable] annual aggregate income of all members of the household [when combined] does not exceed the amount provided for in RPTL § 467-c(1)(d).

(3) The increase in maximum rent or carrying charges resulted in the maximum rent or carrying charge equaling or exceeding one-third of the [combined disposable] annual aggregate income of all members of the household. That portion of a rent or carrying charge increase attributable to gas or electrical utility charges or an increase in dwelling space, services or equipment is excluded from exemption.

Commissioner Adolfo Carrión, Jr.

February 10, 2023



**NEW YORK CITY LAW DEPARTMENT**

**DIVISION OF LEGAL COUNSEL**

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**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 1, 2022

Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

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**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 1, 2022

Date