

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).

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 Wednesday, November 8, 2023. To participate in the public hearing, enter the Webex URL or use the QR code below:

<https://nychpd.webex.com/nychpd/j.php?MTID=m633b0b9de84613da7393e5b4eede384c>



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

Meeting Number: 23487056776 Password: 2023

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

To join by video system:

Dial 23487056776@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: 23487056776 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.
- **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 by November 7, 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 November 8, 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. 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 November 1, 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

Consistent with HPD's authority under section 32 of the Private Housing Finance Law ("PHFL"), HPD, the supervising agency for City-aided Mitchell-Lama developments, proposes to adopt rules that would set forth a separate, streamlined process for rent increases in units occupied by tenants whose rent is paid in whole or in part with a rental assistance subsidy. For these tenants, an increase to the monthly rent will not result in a greater cost to the tenant because the rent increase is borne by the rental assistance program. The budget-based analysis currently set forth in in 28 RCNY 3-10, as well as the public hearing requirement, applies only to units where the rent increase results in the tenant paying more rent or carrying charges. As such, HPD is proposing a rule amendment that would apply different procedures to rent increases for units occupied by tenants with a rental assistance subsidy that will be more efficient because they will not require a hearing or tenant notifications.

The proposed rule amendment would authorize the housing company or HPD itself to seek such increases for tenants whose rent is paid by a rental assistance subsidy, pursuant to an application from the Mitchell-Lama housing company that includes, among other things, a three-year projection of operations on a cash flow basis and the most recent annual audited financial statement. The implementation of rent increases for subsidized tenants can occur more often than every two years. As such, housing companies can benefit from the additional cash flow available through the rental assistance subsidy programs without imposing any increased rental burden on the residents and can do so on a more expedited, frequent basis.

Section 1. Section 3-10 of chapter 3 of title 28 of the Rules of the City of New York is amended by adding a new subdivision (i) to read as follows:

(i) (1) Notwithstanding anything to the contrary contained in this section, a housing company may submit an application for an increase in the maximum rental or carrying charges per dwelling unit paid solely by a tenant/cooperator who pays for such rent or carrying charge, in whole or in part, with a rental assistance subsidy. Where the housing company does not submit such an application, HPD, upon its determination of the need for an increase in rents or carrying charges, may request that such housing company submit the information set forth in paragraph two of this subdivision. For the purposes of this subdivision, the term “rental assistance subsidy” means payments made by a federal, state or local governmental agency or instrumentality for the payment of monthly rent or carrying charge up to an enumerated payment standard, provided that an increase in such payment standard does not result in a higher rent or carrying charge contribution for the tenant/cooperator in receipt of such rental assistance subsidy.

(2) Such application need not be in the same form as delineated in subdivision (c) of this section, but must contain such information and documentation as required by HPD, including, but not limited to:

(i) Name of housing company, location of development, date of organization and number of rental rooms.

(ii) Dates of completion and of occupancy.

(iii) Status with respect to tax exemption.

(iv) Present average room rent.

(v) Present income from non-dwelling spaces.

(vi) Assessed valuation of land and land improvements.

(vii) Such other information and data as may be pertinent.

(viii) Request for a specific rent increase to the applicable rental assistance subsidy payment standard.

(ix) The following exhibits and schedules using a format for these exhibits and schedules available from HPD:

Exhibit I. A three-year projection of operations on a cash flow basis, complete with applicable schedules. In addition to the three-year projection, an actual base year must be used as a starting

point, reflecting the information in the latest certified statement of financial condition prepared by a certified public accountant.

Exhibit II. A calculation of the monthly rental or carrying charge increase required up to the maximum payment standard for the applicable rental assistance subsidy program, detailing the number of tenants/cooperators receiving a rental assistance subsidy and their monthly rents or carrying charges on a per room basis in a format approved by HPD. This calculation must include beginning working capital or deficit working capital as of the beginning of the projection. This calculation must also include total deficits projected for the length of the projection and one month's working capital to be left at the end of the period.

Exhibit III. A three-year projection of operations on a cash flow basis after reflecting the increase calculated in Exhibit II above. All applicable schedules will be provided as required in Exhibit I.

Exhibit IV. The most recent annual audited financial statement for the housing company. Working capital or negative working capital resulting from prior years' operations, as well as required reserves that were not funded, must be considered in the calculation of the required increase in the petition.

(x) Such further information on any of the matters listed above or on any other matters as HPD may require. Such additional information shall be verified and filed within the time stated by HPD. HPD may also request an amended or superseding application.

(3) Notwithstanding subdivision (b) of this section, no public hearing shall be required before HPD may act upon an application filed pursuant to this subdivision and HPD may grant such an application more frequently than every two years. The provisions of subdivisions (e), (f) and (h) of this section shall not apply to such application. Notwithstanding subdivision (c) or (d) of this section, there is no requirement to deliver notices regarding such pending application to the subsidized tenant/cooperators.

(4) Once HPD determines to grant such an increase request, the Assistant Commissioner shall issue an Order specifying the amount of the increase and the date(s) of its implementation.

(5) If the tenant/cooperator permanently vacates a dwelling unit for which a rent/carrying charge increase has been granted pursuant to this subdivision and the new tenant/cooperator for such unit is ineligible for and does not receive a rental assistance subsidy for which such increase was granted, the rent or carrying charge for such unit shall be reduced to the amount that has been approved for such unit in accordance with the subdivisions of this section other than this subdivision (i).

Commissioner Adolfo Carrión, Jr.

October 6, 2023

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: Amendment of Rules Relating to Limited Profit (Mitchell-Lama) Housing Developments

REFERENCE NUMBER: 2023 RG 053

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: August 17, 2023

Senior 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: Amendment of Rules Relating to Limited Profit (Mitchell-Lama) Housing Developments

REFERENCE NUMBER: HPD-90

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

 August 17, 2023

Date