

## 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) proposes to add a new Chapter 64 to Title 28 of the Rules of the City of New York to implement the Affordable Housing from Commercial Conversions Tax Incentive Benefits program adopted by the New York State Legislature in Chapter 56 of the Laws of 2024.

**When and where is the Hearing?** HPD will hold a public hearing on the proposed rules online. The public hearing will take place from 10:30 am to 12:00 pm on Wednesday, November 6, 2024.

To participate in the public hearing, enter the Webex URL: <https://nychpd.webex.com/nychpd/j.php?MTID=m167231ef53f3c5914caa55927e79360b>.

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

Meeting Number: 2335 322 9893

Password: puVCGzPJ828

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

To join by video system:

Dial 23353229893@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 Number: 1-646-992-2010

Access Code: 2335 322 9893

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 website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [rules@hpd.nyc.gov](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail written comments to John Leonard, TIP Executive Director, 100 Gold Street, Room 8D-09, New York, New York 10038.
- **Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 863-6603 or emailing [leonardj@hpd.nyc.gov](mailto:leonardj@hpd.nyc.gov) by November 5, 2024 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. Please note that the hearing is for accepting oral testimony only and is not held in a "Question and Answer" format.

**Is there a deadline to submit written comments?** All written comments must be submitted on or before November 6, 2024.

**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 must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 863-6603 or e-mail at [leonardj@hpd.nyc.gov](mailto:leonardj@hpd.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 30, 2024.

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 a recording of oral comments concerning the proposed rules will be available to the public.

**What authorizes HPD to make this rule?** Sections 1043 and 1802 of the City Charter, and Section 467-m of the New York State Real Property Tax Law authorize HPD to make these proposed rules. The proposed rules were not included in HPD's regulatory agenda for this fiscal year because it was not anticipated when the agenda was developed.

**Where can I find the HPD rules?** The HPD rules are located 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**

### *Statutory Background*

In 2024, the Legislature amended the New York State Real Property Tax Law ("RPTL") to add a new section 467-m (the "Act"), which established the Affordable Housing from Commercial Conversions Tax Incentive Benefits program ("AHCC Program Benefits") in order to provide real property tax exemptions for the conversions of non-residential buildings, other than a hotel or other class B multiple dwelling, to residential use. AHCC Program Benefits are available to eligible multiple dwellings, as that term is defined in the Act, that contain six or more dwelling units, where the conversion commenced after December 31, 2022, and on or before June 30, 2031, and completed on or before December 31, 2039. Eligible multiple dwellings must be operated as rental housing.

### AHCC Program Benefits

AHCC Program Benefits vary depending upon the location and timing of the project. The Act divides projects into two geographic groups: projects located in the Manhattan prime development area—defined as a tax lot entirely south of 96th Street in Manhattan—receive a greater level of exemption from real property taxes, whereas projects located anywhere in the City outside the Manhattan prime development area receive a lower exemption. The Act also groups projects

based on their commencement date, as that term is defined in the Act. All qualifying projects receive a 100% exemption for up to three years during construction.

- An eligible multiple dwelling that has a commencement date on or before June 30, 2026, receives for the first 30 years following the “construction period”, as that term is defined in the Act: (A) within the Manhattan prime development area, a 90% exemption; and (B) outside of the Manhattan prime development area, a 65% exemption. In both instances, this is followed by a 5-year phase out of the exemption.
- An eligible multiple dwelling that has a commencement date on or before June 30, 2028, receives for the first 25 years following the construction period: (A) within the Manhattan prime development area, a 90% exemption; and (B) outside of the Manhattan prime development area, a 65% exemption. In both instances, this is followed by a 5-year phase out of the exemption.
- An eligible multiple dwelling that has a commencement date on or before June 30, 2031, receives for the first 20 years following the construction period: (A) within the Manhattan prime development area, a 90% exemption; and (B) outside of the Manhattan prime development area, a 65% exemption. In both instances, this is followed by a 5-year phase out of the exemption.

#### Prevailing Wages for Building Service Employees

All eligible multiple dwellings must pay prevailing wages to building service employees—defined in the Act to refer to those who are regularly employed at and care and maintain such eligible multiple dwelling—unless such eligible multiple dwelling contains less than 30 dwelling units or is the result of a conversion carried out with the substantial assistance of grants, loans or subsidies provided by a federal, state or local governmental agency or instrumentality pursuant to a program for the development of affordable housing. Furthermore, any eligible multiple dwelling that does not qualify for an exemption from the prevailing wage requirements must submit annual sworn affidavits to the Comptroller ensuring compliance. HPD must publish a list annually of the eligible multiple dwellings subject to this requirement.

#### Affordable Housing Unit Requirements

The Act defines the term “affordable housing unit” to refer to units that meet certain specified affordability criteria, and the Act requires that all such units be permanently rent stabilized.

The Act further requires that all affordable housing units in an eligible multiple dwelling have a unit mix (i.e. assortment of one-bedrooms, two-bedrooms, etc.) that is proportional to the unit mix for such eligible multiple dwelling’s market units (defined in the Act as units other than affordable housing units). Alternatively, at least 50% of the affordable housing units must have two or more bedrooms and no more than 25% can have less than one bedroom. These requirements do not apply if preempted by the requirements of a federal, State or local housing program.

All rental dwelling units in an eligible multiple dwelling must share the same common entrances and common areas as market units and must not be isolated to a particular floor or area of an eligible multiple dwelling.

Affordable housing units cannot be rented on a temporary, transient or short-term basis, and each lease and renewal thereof must be for one or two years, at the option of the tenant. Such units cannot be converted to cooperative or condominium ownership.

By rule, HPD may establish requirements it deems appropriate for the marketing of affordable housing units, monitoring of compliance, and establishment of marketing bands.

### Program Restrictions and Penalties

Concurrent exemptions or abatements are prohibited, but projects may voluntarily renounce or terminate AHCC Program Benefits if HPD so authorizes in connection with a new tax exemption pursuant to either the Private Housing Finance Law or Real Property Tax Law Section 420-c.

HPD may terminate or revoke AHCC Program Benefits for failure to comply with the provisions of the Act other than the prevailing wage requirements, and also may revoke AHCC Program Benefits if a Covered Building Service Employer, as defined in subdivision 7 of the Act, has committed three violations of the building service employee prevailing wage requirements within a five year period. Such violations are determined by a finding by the Comptroller. The Comptroller must notify applicants after a second such violation and publish a list on its website of all applicants with two such violations. If AHCC Program Benefits are revoked, all affordable housing units remain subject to rent stabilization and all other requirements of the Act in perpetuity.

HPD also has the authority to impose penalties for violations of the affordability requirements established by the Act on and after the expiration date of the benefit period and to establish the schedule and method of calculation of such fines by rule.

### Applications and Fees

Applications must be filed no earlier than the completion date and not later than one year after the completion date with a filing fee of \$3000 per dwelling unit. HPD is authorized to promulgate rules imposing a lesser fee for governmentally assisted housing and to require a portion of the filing fee to be paid upon the submission of information—defined in the Proposed Rules as the “Workbook”—HPD requires to commence the marketing process for Affordable Housing Units.

### *The Proposed Rules*

The Proposed Rules, among other things:

- provide application procedures and requirements;
- enumerate the types of permits that would determine the commencement date;
- specify that the gross cubic content of an eligible multiple dwelling must be comprised of at least 50% of the pre-existing non-residential building, as defined in the Act, that was converted;
- establish the rent and income restrictions that apply to the affordable housing units;
- require that tenants of affordable housing units be offered either a one- or two-year rent stabilized lease, at their option;
- prohibit affordable housing units from being operated as a hotel or rented to corporations, partnerships or other entities;
- establish distribution requirements regarding the location of affordable housing units in relation to market units in the multiple dwelling; and
- provide the method for calculating penalties that may be imposed for violations of the affordability requirements of the Act on or after expiration of the benefit period and for the publication of the penalty schedule on HPD’s website.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter, and Section 467-m of the Real Property Tax Law.

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. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 64 to read as follows:

Chapter 64  
AFFORDABLE HOUSING FROM COMMERCIAL CONVERSIONS  
TAX INCENTIVES BENEFITS PROGRAM PURSUANT TO SECTION 467-M  
OF THE REAL PROPERTY TAX LAW

§ 64-01 Definitions.

As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means section four hundred sixty-seven m of the real property tax law, as amended.

Actual Rents. "Actual Rents" means the proposed initial monthly actual rents listed in the Workbook for the Affordable Housing Units.

Aggregate Floor Area of Eligible Multiple Dwelling. "Aggregate Floor Area of Eligible Multiple Dwelling" means the sum of the Floor Area in the Eligible Multiple Dwelling.

Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwelling. "Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwelling" means the sum of the Floor Area of Ineligible Space in the Eligible Multiple Dwelling.

Area Median Income. "Area Median Income" means the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

Building. "Building" shall have the meaning set forth in section 12-10 of the Zoning Resolution.

Building Segment. "Building Segment" shall have the meaning set forth in section 12-10 of the Zoning Resolution.

Commercial Space. "Commercial Space" means any space within an Eligible Multiple Dwelling that is devoted to commercial, community facility, or other non-residential use.

Common Area. "Common Area" means any space within an Eligible Multiple Dwelling to which the residents of two or more rental dwelling units have access without paying a usage fee and that is not located in a rental dwelling unit, in a Commercial Space or in a Service Area.

Dwelling Unit. "Dwelling Unit" means one or more living rooms, arranged to be occupied as a unit separate from all other rooms within a dwelling, with lawful sanitary facilities and a lawful kitchen or kitchenette for the exclusive use of the family residing in such unit, except that for the purposes of this chapter, such term shall include units in all facilities that are licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program, including any units within the Adult Care Facility that are also certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units.

Gross Cubic Content. "Gross Cubic Content" means the volume within the exterior faces of the perimeter walls (or center line of party walls), above legal grade, and below the roof level, plus any legal residential space below grade level. Roof bulkheads or roof penthouses used exclusively for machinery or equipment shall not be included. New exterior stair towers or elevator shafts shall not be included, unless they substitute for existing stair or elevator space which is converted to residential space.

Hotel. "Hotel" means (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law; (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy; (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution; or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than one year shall be deemed to be a short term rental. Notwithstanding the foregoing, Market Units owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Housing Connect. "Housing Connect" means the New York City Housing Connect lottery system or any successor program administered by the Agency to market vacant Affordable Housing Units.

Housing Maintenance Code. "Housing Maintenance Code" means the Housing Maintenance Code of the City of New York, constituting §§ 27-2001 et seq. of the Administrative Code of the City of New York, as amended.

Increase in Gross Cubic Content. "Increase in Gross Cubic Content" means any portion of an Eligible Multiple Dwelling that results from new construction as distinguished from construction within the Gross Cubic Content in existence in a Non-Residential Building as of the Commencement Date.

Ineligible Space. "Ineligible Space" means commercial, community facility, and accessory use space, other than parking which is located not more than twenty-three feet above the curb level. For the purposes of this chapter, Dwelling Units in a facility that is licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program, including any units within the Adult Care Facility that are also

certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units, shall not be considered Ineligible Space.

Legal Rent. "Legal Rent" means the maximum rent permitted under Rent Stabilization; provided, however, that (a) no exemption or exclusion from any requirement of Rent Stabilization shall be applied to any Affordable Housing Unit during the Restriction Period, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to the vacancy of an Affordable Housing Unit where the rent exceeds a prescribed maximum amount, the fact that tenant income and/or unit rent exceed prescribed maximum amounts, the nature of the tenant, or any other factor; and (b) the initial rent charged and paid for an Affordable Housing Unit shall be the initial Legal Rent.

Marketing Monitor. "Marketing Monitor" means an organization approved by the Agency in compliance with the Agency's marketing guidelines and retained by the applicant for AHCC Program Benefits to monitor compliance with the requirements, established by the Act and this chapter, relating to the leasing, subleasing, and occupancy of Affordable Housing Units, including, but not limited to, ensuring that each Affordable Housing Unit is leased at a rent not exceeding the Permitted Rent and is occupied by a household approved by the Agency whose income at the time of initial occupancy of such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act. Such Marketing Monitor may be an in-house department of the applicant, a subsidiary or affiliate of the applicant, or a third-party marketing, leasing, managing, or monitoring administering agent.

Monitoring Contract. "Monitoring Contract" means a contract between the applicant and the Marketing Monitor that is approved in form and substance by the Agency and that:

(i) requires the fee owner to provide monthly rent rolls for all Affordable Housing Units to the Marketing Monitor and to notify the Marketing Monitor no more than seven business days after an Affordable Housing Unit becomes vacant;

(ii) requires the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Restriction Period (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs; (b) is promptly marketed pursuant to such requirements as are established by the Agency; (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Housing Unit and that has been approved by the Agency prior to execution of a lease; (d) is not offered to or rented by a corporation, partnership or other entity; and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and

(iii) requires the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Eligible Multiple Dwelling to the Agency.

Multiple Dwelling Law. "Multiple Dwelling Law" means the Multiple Dwelling Law of the State of New York.

Notice of Intent. "Notice of Intent" means a notice of intent to begin marketing the Affordable Housing Units through Housing Connect.

Permanent Conversion. “Permanent Conversion” has the same meaning as set forth in an Eligible Multiple Dwelling's regulatory agreement with the tax credit monitoring agency.

Permitted Rent. “Permitted Rent” means a rent for any lease or lease renewal at any time during the Restriction Period that does not exceed the lesser of:

(i) the Legal Rent; or

(ii) the rent for any Market Unit of comparable bedroom size in the same Eligible Multiple Dwelling; or

(iii) for Affordable Housing Units in an Eligible Multiple Dwelling, thirty percent of the applicable percentage of Area Median Income, minus the amount of any applicable Utility Allowance, provided, however, that no deduction of the Utility Allowance from the Permitted Rent shall be authorized for any Affordable Housing Unit in an Eligible Multiple Dwelling unless the Utility Allowance shall be deducted from all of the Affordable Housing Units in such Eligible Multiple Dwelling, and provided further that solely for purposes of establishing the initial rent for each Affordable Housing Unit, if there is a regulatory agreement between the fee owner and a federal, state or local agency or instrumentality governing such Affordable Housing Unit that was executed prior to the date of filing of the Workbook, the Area Median Income in the rent schedule to such regulatory agreement and the Utility Allowance in effect on such regulatory agreement execution date shall be utilized.

Service Area. “Service Area” means any space within an Eligible Multiple Dwelling that is utilized by the owner or manager of such Eligible Multiple Dwelling and their respective employees for purposes of building administration and to which residential tenants do not normally have access.

Story. “Story” has the meaning set forth in section 12-10 of the Zoning Resolution.

Utility Allowance. “Utility Allowance” means an allowance established by the Agency for the payment of utilities where the tenant of an Affordable Housing Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Workbook. “Workbook” means the AHCC Program Benefits Workbook available on the Agency's website that is submitted by the applicant to the Agency and which must provide the requested information about all of the Affordable Housing Units and the Market Units, including, but not limited to, (i) the unit mix proposed to satisfy paragraph (b) of subdivision six of the Act or, in accordance with such paragraph, the claimed exemption from such unit mix requirements, and (ii) the unit distribution proposed to satisfy paragraph (a) of subdivision six of the Act and Section 64-04 of this chapter.

Zoning Resolution. “Zoning Resolution” means the Zoning Resolution of the City of New York, as amended.

#### §64-02 Application Procedure and Documentation.

(a)

(1) The Agency may authorize changes to any information provided in the Workbook:



(i) after the Agency has provided an initial approval thereof until the Notice of Intent has been accepted by the Agency; and

(ii) after the Notice of Intent has been accepted by the Agency only if such information conflicts with the requirements of a regulatory agreement with a federal, state or local governmental agency or instrumentality, provided, however, that with respect to both subparagraphs (i) and (ii) of this paragraph, the Agency shall not authorize any changes to the Utility Allowance and the Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area after the first Workbook is submitted.

(2) Notwithstanding paragraph (1) of this subdivision and the definition of "Permitted Rent" in section 64-01 of this chapter, where an Eligible Multiple Dwelling is receiving tax exempt bond proceeds or tax credits, the Agency may authorize the following changes to the information in the Workbook concerning the Affordable Housing Units in such Eligible Multiple Dwelling after the Agency has provided an initial approval thereof:

(i) with respect to the Actual Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until the marketing advertisement for such Affordable Housing Units has been published through Housing Connect, provided that the tax credit monitoring agency for such Eligible Multiple Dwelling has approved such changes; and

(ii) with respect to the Legal Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until Permanent Conversion, provided that such changes do not alter the Actual Rents for such Affordable Housing Units published in the marketing advertisement through Housing Connect.

(b) The Application must be submitted with the non-refundable filing fee established by the Act, provided that twenty-five percent of such filing fee shall be submitted with the initial Workbook submission, and provided further, however, that the Agency may waive such filing fee for any Application for an Eligible Conversion in which all of the Dwelling Units are Affordable Housing Units constructed with the substantial assistance of grants, loans or subsidies provided by a federal, state or local agency or instrumentality pursuant to a program for the development of affordable housing. Any superintendent unit required by the Housing Maintenance Code or Multiple Dwelling Law to be in the Eligible Multiple Dwelling containing such Affordable Housing Units shall not disqualify such Eligible Conversion from the filing fee waiver the Agency may provide pursuant to this subdivision.

(c) Each Application shall include:

(1) Evidence satisfactory to the Agency that a restrictive declaration in a form satisfactory to the Agency:

(i) has been executed by the fee owner and any ground lessee of the Eligible Multiple Dwelling;

(ii) has been recorded against the real property containing the Eligible Multiple Dwelling;

(iii) identifies each Affordable Housing Unit in the Eligible Multiple Dwelling, the number of bedrooms in such Affordable Housing Unit, the applicable prescribed percentage of Area Median Income for such Affordable Housing Unit, and provides that the rents to be charged to the tenants of each such Affordable Housing Unit shall be established pursuant to this chapter, and provides that the Affordable Housing Units in such Eligible Multiple Dwelling shall during the Restriction Period be rented to eligible tenants at or below the Permitted Rent and be subject to Rent Stabilization; and

(iv) provides that such Eligible Multiple Dwelling must comply with all of the requirements for AHCC Program Benefits during the Restriction Period.

(2) Evidence satisfactory to the Agency that:

(i) the Workbook was filed no earlier than twelve months before the Completion Date and no later than the later of two months after (A) the Completion Date; or (B) the effective date of this rule; and

(ii) the Notice of Intent to begin marketing the Affordable Housing Units was filed with the Agency.

(3) Proof that the Agency determined that:

(i) an Eligible Multiple Dwelling will meet the unit mix requirements for Affordable Housing Units established pursuant to paragraph (b) of subdivision six of the Act, or, in accordance with such paragraph, is exempt from such unit mix requirements; and

(ii) an Eligible Multiple Dwelling will meet the distribution requirements for rental Dwelling Units established pursuant to of paragraph (a) of subdivision six of the Act and section 64-04 of this chapter.

(4) An executed Monitoring Contract.

(5) An affidavit from a registered architect or professional engineer licensed to practice and in good standing with the New York State Department of Education that, among other things, calculates the Aggregate Floor Area of the Eligible Multiple Dwelling and the Aggregate Floor Area of Ineligible Space in the Eligible Multiple Dwelling.

(d) All Applications must be submitted on forms approved by HPD.

§64-03 Legal Instrument. The restrictive declaration required pursuant to paragraph one of subdivision c of section 64-02 of this chapter shall constitute the legal instrument, in accordance with subparagraph (v) of paragraph (j) of subdivision six of the Act, by which the requirements associated with AHCC Program Benefits will be recorded and enforced.

§64-04 Commencement Date.

(a) The Commencement Date for an Eligible Conversion shall be the date of the initial issuance by the Department of Buildings to a Non-Residential Building of one of the following types of permits:

(1) Job Type: "ALT-CO - New Building with Existing Elements to Remain"; Work Type: "General Construction";

(2) Job Type: "Alteration CO"; Work Type: "General Construction"; or

(3) Job Type: "Alteration Type 1"; Work Type: "OT – General Construction".

(b) The permit that establishes the Commencement Date pursuant to subdivision (a) of this section may only establish such Commencement Date for one Eligible Conversion.

§64-05 New Construction Eligibility. AHCC Program Benefits are available for a portion of an Eligible Multiple Dwelling which represents an Increase in Gross Cubic Content of such Eligible Multiple Dwelling, provided that at least fifty percent of the floor area of the completed Eligible Multiple Dwelling consists of the pre-existing Non-Residential Building that was converted.

§64-06 Distribution Requirements.

(a) If a Story in an Eligible Multiple Dwelling contains one or more Affordable Housing Units, not less than thirty percent of the Dwelling Units on such Story shall be Market Units, provided, however, that the Agency may waive such requirement where either:

(1) the Affordable Housing Units comprise more than fifty percent of the units in such Eligible Multiple Dwelling; or

(2) there is only one Dwelling Unit on such Story.

(b) Each Building Segment in an Eligible Multiple Dwelling must contain one or more Affordable Housing Units and have the same or similar proportion of Affordable Housing Units to Market Units.

(c) All Common Areas in an Eligible Multiple Dwelling shall be open and accessible to the residents of all of the rental Dwelling Units in such Eligible Multiple Dwelling, including the residents of any Affordable Housing Units.

(d) The Agency may disapprove any Building configuration that would frustrate the intent and purpose of paragraph (a) of subdivision six of the Act and subdivisions (a) through (c) of this section by segregating Affordable Housing Units or limiting the ability of residents of Affordable Housing Units to access an Eligible Multiple Dwelling's Common Areas.

§64-07 Rent and Income During the Restriction Period.

(a) The rent for an Affordable Housing Unit shall not exceed the Permitted Rent;

(b) Pursuant to paragraph (j) of subdivision 6 of the Act, the Marketing Band for the initial rents of Affordable Housing Units shall be established by deducting three percentage points from the applicable Area Median Income, adjusted by unit size and the applicable Utility Allowance;

(c) Each Affordable Housing Unit shall be occupied by a household whose income at the time that such household initially occupies such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act;

(d) An Affordable Housing Unit shall be leased, both upon initial rent-up and upon any subsequent vacancy, pursuant to such marketing guidelines as may be published by the Agency;

(e) No Affordable Housing Unit shall be held off the market for a period that is longer than is reasonably necessary;

(f) No Affordable Housing Unit shall be offered to a corporation, partnership or other entity;

(g) No lease for an Affordable Housing Unit can be executed until the Agency verifies the eligibility of the proposed tenants; and

(h) Each tenant of an Affordable Housing Unit shall be offered a rent stabilized lease for a term of either one or two years, at such tenant's option.

#### §64-08 Hotels.

No Eligible Multiple Dwelling that is operated as a Hotel shall be eligible for AHCC Program Benefits.

#### §64-09 Penalties for violations of affordability requirements.

(a) On or after the expiration date of the AHCC Program Benefits provided pursuant to the Act, the Agency may impose, after notice and an opportunity to be heard in accordance with the procedures established pursuant to chapter 39 of this title, a penalty for any violation by an Eligible Multiple Dwelling of the affordability requirements of subdivision six of the Act.

(b) The Agency shall compute the penalties under this section as a percentage of the capitalized value of all AHCC Program Benefits on the Eligible Multiple Dwelling, calculated as of the first year that benefits were granted, not to exceed one thousand percent.

(c) The Agency shall establish a schedule of penalties imposed in connection with violations of the affordability requirements of subdivision six of the Act, in accordance with the methodology provided for in subdivision b above.

Commissioner Adolfo Carrión, Jr.  
[Date], 2024

**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:** Rule Implementing Tax Incentive Program for Affordable Housing from Commercial Conversions

**REFERENCE NUMBER:** 2024 RG 089

**RULEMAKING AGENCY:** 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: September 20, 2024

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Rules for Affordable Housing from Commercial Conversions Tax Incentive Benefits (HPD)**

**REFERENCE NUMBER: HPD-99**

**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 a cure period is provided for in a separate chapter of HPD's rules, which this proposed rule cross-references.

/s/ Grace Francese  
Mayor's Office of Operations

September 20, 2024  
Date