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2009 Inclusionary Housing Text Amendments
Overview and FAQ

This document contains general information about changes to the Inclusionary Housing Program adopted in the New York City Zoning Resolution (the "Zoning Resolution") and is not intended to provide legal advice or to be relied upon in any way by any person or entity. It is important to rely only upon the actual text of the Zoning Resolution and to consult with an attorney as to its meaning.

2009 Inclusionary Housing Text Amendments Overview

On June 4, 2009, the City Planning Commission approved revisions to Section 23-90, the Inclusionary Housing provisions of the Zoning Resolution. On July 29, 2009, the New York City Council also approved these revisions ("Amendments") and they took effect.

The Amendments increase the range of options for the production of affordable housing, and improve the administration of the Inclusionary Housing Program. The Amendments can broadly be divided into three categories: creating a permanently affordable homeownership option, updating the provisions of the original R10 program, and implementing a set of technical and administrative improvements to the Inclusionary Housing Program.

It is important to note that the Amendments neither alter the height and setback requirements of permitted development anywhere in New York City, nor modify the areas where the Inclusionary Housing Program applies.

The Amendments include the following specific changes:

New Homeownership Option

- Allows for a permanently affordable homeownership option
- Sets financing parameters for the purchase of homeownership units at initial sale and upon resale
- Establishes income eligibility requirements for the purchase of homeownership units

Changes to the R10 Program

- Allows for Inclusionary Housing in R10 Districts to be financed with a range of public financing programs, as already has been permitted in Inclusionary Housing designated areas
- Continues to provide a privately financed Inclusionary Housing option in R10 Districts, but now allows Inclusionary Housing to carry privately financed debt at initial occupancy
- Modifies and simplifies floor area bonus ratios
- Modifies eligibility requirements for preservation projects in R10 Districts

Technical and Administrative Improvements

- Simplifies the formula for setting rents, and allows a wider marketing band in conformance with other HPD programs
- Modifies affordable housing unit distribution requirements and applies them to both on-site and off-site mixed-income Inclusionary Housing projects
- Simplifies the size requirements for affordable housing units
- Establishes bedroom mix requirements for both on-site and off-site Inclusionary Housing projects
- Clarifies the role of not-for-profit administering agents: they are responsible for rent-up of affordable units and income compliance, but they are not responsible for building management (that is the responsibility of the owner)
- Modifies the process for issuing certificates of occupancy to both Inclusionary Housing projects and compensated developments

2009 Inclusionary Housing Text Amendments FAQ

New Homeownership Option

1. How will homeownership units be marketed at initial sale?

At initial sale, the administering agent, under supervision of HPD's Marketing Unit, will be responsible for the marketing process in accordance with HPD's marketing guidelines. For information on available homeownership units, go to the following link on the HPD website:
http://nyc.gov/html/hpd/html/apartment/apartment.shtml

2. How will homeownership units be marketed at resale?

At resale, pursuant to HPD's guidelines for Inclusionary Housing, homeowners interested in selling their homeownership units are required to inform the administering agent. Thereafter, the administering agent will, among other things: (a) inform HPD of the homeowner's interest in selling his or her homeownership unit; (b) list the homeownership unit on the administering agent's website; (c) send a copy of such listing to the community board in which the homeownership unit is located; and (d) send a copy of such listing to the City Council member that represents the district(s) in which the homeownership unit is located.

3. How will the initial price of a homeownership unit be determined?

To calculate the initial price of a homeownership unit, HPD will:

- Select the applicable income limit for low, moderate or middle income households (which are, respectively, 80%, 125% or 175% of income index)
- Select the applicable household factor (HHF) established by HPD (see chart below) based on HUD's family size adjustment for different unit sizes

Bedrooms	HHF
Studio	0.70
1 Bedroom	0.80
2 Bedroom	0.90
3 Bedroom	1.04

- Calculate the maximum annual housing costs by taking 30% of the applicable income limit for low, moderate or middle income households and multiplying it by the applicable HHF
- Calculate the mortgage amount at the prevailing interest rate by subtracting the total annual housing costs (e.g.: property taxes, utilities, maintenance, etc…) from the maximum annual housing costs, and then calculating the present value of the remainder
- Divide that mortgage amount by 90% to determine the initial price, including a 10% down payment

See the following example:

Calculating Initial Sales Prices:

A sample calculation of the initial sales price for a two-bedroom unit is presented below to describe the methodology that will be used in setting the price.

- Area Median Income (AMI) for the sales year = $81,800 for a family of four
- Low Income limit = 80% AMI = 65,440 for a family of four
- HPD assumes that a household earning up to 80% AMI pays approximately 30% of its income towards monthly housing costs, therefore,:
  - 30% of the income limit = $19,632
  - $19,632 x .9 (*HHF) = $17,669 (this is the maximum annual housing costs for households earning up to 80% AMI)
- Assume the monthly maintenance costs of the unit are $486 per month or $5,832 per year
- Subtract the annual maintenance costs ($5,832) from the maximum annual housing costs ($17,669) = $11,837 available for mortgage payments annually.
- **Mortgage: Present value (6%/12,30*12,11,837/12,1) = $165,346
- Divide the mortgage amount ($165,346) by 90% to get the initial price, including a 10% down payment = $183,718
- **Sales Price = $183,718**

4. Who is eligible to purchase a homeownership unit?

Generally, an eligible buyer is: (a) a low, moderate or middle income household for whom the monthly costs of the homeownership unit in question are no more than 35% and no less than 25% of the applicable household income (income marketing band), (b) a household that can meet the required 10% down payment and (c) a household that can meet additional requirements as specified in the Inclusionary Housing guidelines.

To calculate the income marketing band of a homeownership unit, HPD will:

- Identify the applicable income limit
- Identify the applicable HHF

Bedrooms	HHF
Studio	0.70
1 Bedroom	0.80
2 Bedroom	0.90
3 Bedroom	1.04

- Determine the maximum annual housing costs by taking 30% of the applicable income limit and then multiplying the maximum annual housing costs by the applicable HHF
- Divide maximum annual housing costs by 25% to determine maximum eligible household income
- Divide maximum annual housing costs by 35% to get the minimum eligible household income

5. Who selects buyers for homeownership units?

At initial sale, the administering agent will select prospective buyers pursuant to a lottery conducted in accordance with HPD marketing guidelines for homeownership units. At resale, the administering agent will select prospective buyers from an HPD list that will be created from the applications received for the particular homeownership unit at the time such unit is listed for resale by the administering agent. Beginning with the first person on the HPD list, the administering agent will determine whether the prospective homeowner meets the Zoning Resolution's and HPD's guidelines eligibility requirements for purchasing such unit.

6. If I inherit a homeownership unit, will I be able to keep it?

Only if the monthly costs for such unit (including an imputed mortgage if there is no longer a mortgage on the unit) are between 25% and 35% of your household income. HPD's guidelines may state additional requirements.

7. Will preference to purchase a homeownership unit be given to persons living in the community?

Yes, per HPD marketing guidelines, at initial occupancy, there will be a community preference applicable to 50% of the units.

8. Is there any program that will help potential homebuyers pay the 10% down payment?

Yes. HPD's HomeFirst Down Payment Assistance program provides qualified homebuyers with up to 6% of a home's purchase price for a down payment and/or closing costs. For more information on the HomeFirst Down Payment Assistance Program, go to the following link on the HPD website: http://www.nyc.gov/html/hpd/html/buyers/downpayment.shtml

9. As a homeowner, how long must I live in a homeownership unit before I can sell it?

A homeowner may put a homeownership unit up for sale anytime after purchasing it. (See also question 14 on setting the resale price.)

10. Do I have to live in the homeownership unit year-round?

The homeownership unit must be your primary residence.

11. Can I refinance a homeownership unit after I purchase it?

With the administering agent's approval, homeowners may refinance.

12. If I am selling a homeownership unit, do I have to find a buyer on my own?

A homeowner must inform the administering agent of the intent to sell his or her homeownership unit by filing a 'Notice of Intent to Sell' form. Upon receipt of the form, the administering agent will market the homeownership unit, select an eligible buyer and assist with the closing process. (See also question 2.)

13. May I sublet my homeownership unit?

Yes. Inclusionary homeowners may, with the approval of the administering agent, sublet for not more than a total of two years out of any four-year period.

14. Who will set the resale price for a homeownership unit and how will the resale price of a homeownership unit be determined?

The administering agent will set the resale price for a homeownership unit. Inclusionary homeownership unit sales prices are set to be affordable at the applicable income limit at the time of initial sale. To ensure continued affordability, the unit's maximum resale price is the **lower** of:

- The **appreciation cap** (a resale price at which housing costs equal 30% of the targeted income limit at the time of resale)
- The **appreciated price** (the product of the sale or resale price of a homeownership unit on the date of the previous sale and the appreciation index at resale). See following example:

Example: Calculating the Maximum Resale Price

The Lower of:

Calculating Appreciation Cap:

The homeownership unit for which the initial sales price above was calculated, was affordable to low income households (up to 80% AMI). To find the appreciation cap upon resale for this same unit, we assume that the unit will be marketed at the next income level, that is, to moderate income households (up to 125% AMI).

- Income Index 10 years after initial sale (2021) = **$103,656** for a family of four
- Moderate Income Limit = 125% of the Income Index, **$129,570**
- HPD assumes that a Moderate Income Household will pay approximately 30% of its income on Monthly Housing Costs:
- 30% of the Moderate Income Limit = **$38,871**
- $38,871 x .9 (Household factor for number of persons permitted to occupy a two bedroom unit) = **$34,983** → Annual Housing Costs at the Moderate Income Limit
- Monthly Housing Costs are $2,915 ($34,983 divided by 12)
- Assume the monthly maintenance costs of the unit are $607 per month or $7,283 per year
- Subtract the annual maintenance costs ($7,283) from the maximum annual housing costs ($34,983) = $27,700 available for mortgage payments annually.
- Mortgage: present value (6%/12,30*12, $2,308) = **$384,955**
- Divide mortgage ($384,955) by 90% to get the Appreciation Cap, including a 10% Down Payment = **$427,728**

OR

Calculating Appreciated Price:
The homeownership unit for which the initial sales price above was calculated, was affordable to low income households (up to 80% AMI), is available for resale 10 years later in 2021. The appreciated price is calculated as follows:

- Previous sale price: **$183,718** (affordable to low income households at 80% AMI)
- Appreciation Index on previous sale date (2011) = 240.267
- 10 full calendar years after the sale, Appreciation Index at resale (2021) = 314.564 (assuming the sum of increase in CPI+1%)
- Appreciated Price = (previous sales price x (Appreciation Index at resale/Appreciation Index on previous sale date)): ($183,718 x (314.564/240.267)) = **$240,529**

<u>Maximum Resale Price</u> = $240,529 (the lesser of the appreciation cap and appreciated price)

Maximum Resale Price cont'd

Only full calendar years from the previous sale date will be considered when calculating the appreciation index for the appreciated price of a homeownership unit. However, if a homeowner submits a 'Notice of Intent to Sell' form to the administering agent on a date that is no more than three (3) months prior to the anniversary of the last sale date, a full calendar year may be utilized in calculating the appreciation index.

15. If I make improvements to the homeownership unit, can I sell it at a higher price than the maximum resale price?

No. The resale price of a homeownership unit will be based on the most recent sale price and the appreciation rate allowed for the intervening period. (See also question 15.) The annual appreciation rate is considered high enough to encourage the upkeep of the unit over time, and HPD will require the homeownership unit to meet HPD's livability standard at resale. If a unit is found to be in substandard condition, the cost of returning a homeownership unit to the livability standard will be deducted from the proceeds of the sale of such unit.

16. Will I be able to inspect the homeownership unit before purchasing it?

Yes. If selected, eligible buyers will be given an opportunity to inspect the homeownership unit before entering into a purchase contract.

17. What if I want to leave my homeownership unit to a person who lives with me, whom I consider a family member and who takes care of me?

Only a family member may inherit a homeownership unit; HPD has adopted DHCR's definition of a family member. This definition includes any person residing in the affordable housing unit as a primary residence who can prove an emotional and financial commitment to the homeowner as well as interdependence between such person and the homeowner. Please follow the link below for a detailed definition:
http://www.dhcr.state.ny.us/rent/factsheets/orafac30.htm

Changes to the R10 Program

18. Will R10 projects receive different ratios for on-site vs. off-site Inclusionary Housing? What about Inclusionary Housing on private vs. public sites?

There is no longer a difference in the ratios for on-site vs. off-site, or private vs. public sites.

19. In order for a project to be eligible for preservation in R10 Districts, must every household income qualify?

No. Instead, as permitted in Inclusionary Housing designated areas, the average of the building's rent roll must income qualify. At vacancy, new tenants will be required to income qualify.

20. What if an R10 project is part new construction and part preservation or part substantial rehabilitation? Will it get a blended ratio?

Yes, for projects that are partly new construction and partly preservation or substantial rehabilitation, blended ratios will be applied. For example, for a project that consists of a building that is being preserved and newly constructed affordable housing, the new construction portion of the R10 project will receive either: (a) the 3.5 ratio if it is financed entirely with private debt or (b) the 1.25 ratio if financed, in whole or in part, with public funding. The preservation portion of the project will receive either: (a) the 2.0 ratio if it is financed entirely with private debt or (b) the 1.25 ratio if financed, in whole or in part, with public funding. The ratios are the same whether the Inclusionary Housing is located on-site or off-site.

21. Can a portion of an existing building qualify for the preservation option?

No. Only entire buildings or building segments may qualify for the preservation option.

Technical and Administrative Improvements

22. What are the income limits for low, moderate and middle income units?

The income limits are based on percentages of the income index, as defined in the Zoning Resolution. For more information on these income limits, please go to the following link: http://www.nyc.gov/html/hpd/downloads/pdf/Income-limits-and-maximum-rents.pdf

23. Who approves the initial rents and what are they based upon?

HPD approves the initial rents based on the Inclusionary Housing Program rent limits.

24. Is the not-for-profit administering agent still responsible for ensuring the rent-up and income compliance of affordable units?

Yes. The administering agent is still responsible for ensuring income compliance at initial rental and re-rental on vacancy of affordable units, but building management and maintenance tasks are the owner's responsibility.

25. In a mixed-income building, must all affordable units be completed before certificates of occupancy can be received for any portion of the building?

No. In a mixed income building, any story with at least one affordable unit that is not in a portion of a building using floor area compensation may receive a certificate of occupancy if such certificate includes each affordable housing unit on such story.

26. In a mixed-income, mixed-use building with 168 market rate units and 39 low income units, with 9 units per story, how many low income units may be placed on each story?

Where there are sufficient low income units, they must be distributed on not less than 65% of the residential stories. In addition, no more than one-third of the units on a story may be low income units unless at least one-third of the units on each story are low income units. Therefore, in this case, there may be no more than three low income units per residential story unless each residential story in the building has at least one low income unit. See example below.

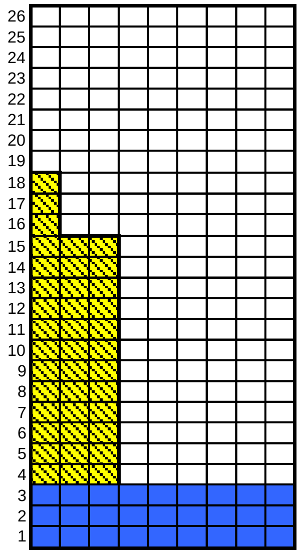
Example: 58-story mixed-income, mixed-use building

Total Units: 207

Low Income Units: 39

	Low Income Units
	Commercial/ Other Use

- As per this diagram, the building shown has affordable units on 15 of 23 residential stories, which meets the 65% requirement. Also, no more than one-third of the units on any residential story are affordable
- Floors 4 -15: 3 affordable and 6 market (33.33%)
- Floors 16 -18: 1 affordable and 8 market (11.11%) ensures distribution of units within mixed-income buildings
- Distribution requirements apply regardless of whether building contains rentals, condominiums, co-op apartments, or a mix



27. What are the distribution requirements for preservation and supportive housing projects?

All of the dwelling units in preservation and supportive housing projects, other than approved superintendent's units, must be Inclusionary Housing units. Therefore, distribution requirements attributable to mixed income buildings do not apply to such projects.

28. Do buildings with very little street frontage have to comply with the bedroom mix requirements?

The Zoning Resolution permits HPD to waive the bedroom mix requirement for new construction Inclusionary Housing located on an interior lot or through lot, (as defined in the Zoning Resolution), with less than 50 feet of frontage along any street.

29. How does one determine what size unit a particular household may qualify for (both rental and homeownership)?

Based on HUD's and HPD's Code Enforcement occupancy standards, HPD allows 1.5 persons per bedroom (rounding up) and 80 square feet of personal space for anyone over the age of four. Additionally, several financing programs have more restrictive occupancy standards. When these financing programs are paired with the Inclusionary Housing Program, the more restrictive occupancy requirements shall apply.

30. Do preservation and supportive housing projects have to comply with the bedroom mix requirements?

Preservation and supportive housing projects are not subject to the bedroom mix requirements. However, HPD's supportive housing units must comply with the bedroom mix configuration required by HPD's Division of Special Needs Housing.

31. Do preservation and supportive housing projects have to comply with the unit size requirements?

Preservation and supportive housing projects are not subject to the unit size requirements. However, HPD's supportive housing units must comply with the unit size requirements specified by HPD's Division of Special Needs Housing.