Inclusionary Housing Text Amendment

February 11, 2009

Matter underlined is new, to be added;
Matter within # # is defined in Section 12-10;
Matter in strikeout is old, to be deleted;
* * * indicates where unchanged text appears in the Zoning Resolution

12-10
DEFINITIONS

Words in the text or tables of this Resolution which are #italicized# shall be interpreted in accordance with the provisions set forth in this Section.

* * *

Inclusionary Housing designated area (7/25/07)

An "Inclusionary Housing designated area" is a specified area in which the Inclusionary Housing Program is applicable, pursuant to the regulations set forth in Section 23-90 (INCLUSIONARY HOUSING), inclusive. The locations of s~~S~~uch #Inclusionary Housing designated areas# are identified in ~~Section 23-922~~ Appendix A of Article II, Chapter 3 of this Resolution or in Special Purpose Districts, as applicable.

* * *

Chapter 3
Bulk Regulations for Residential Buildings in Residence Districts

* * *

23-144
In designated areas where the Inclusionary Housing Program is applicable

In #Inclusionary Housing designated areas#, as listed in the following table, the maximum permitted #floor area ratios# shall be as set forth in Section 23-9~~4~~52 (In Inclusionary Housing designated areas). The locations of such districts are specified in ~~Section 23-922 (Inclusionary Housing designated areas)~~ Appendix A of this Chapter.

Community District	Zoning District
Community District 1, Brooklyn	R6 R6A R6B R7A
Community District 2, Brooklyn	R7A
Community District 3, Brooklyn	R7D
Community District 7, Brooklyn	R8A
Community District 6, Manhattan	R10
Community District 7, Manhattan	R9A
Community District 2, Queens	R7X

* * *

23-15
Maximum Floor Area Ratio in R10 Districts

R10

In the district indicated, except in #Inclusionary Housing designated areas#, the #floor area ratio# for any #building# on a #zoning lot# shall not exceed 10.0, except as provided in Section 23-17 (Special Provisions for Zoning Lots Divided By District Boundaries) and Section 23-90

(INCLUSIONARY HOUSING), inclusive.

Notwithstanding any other provision of this Resolution, the maximum #floor area ratio# shall not exceed 12.0. However, within the boundaries of Community District 7 in the Borough of Manhattan, all #developments# or #enlargements# in R10 Districts, except R10A or R10X Districts, shall be limited to a maximum #floor area ratio# of 10.0.

* * *

23-90
INCLUSIONARY HOUSING

23-91
~~**General Provisions**~~

~~An Inclusionary Housing program is established in those areas designated in Section 23-92 (Applicability) to preserve and to promote a mixture of low to upper income housing in neighborhoods experiencing a shift to upper income housing and thus to promote the general welfare. The requirements of this program are set forth in Sections 23-90 through 23-95.~~

~~**23-92**~~
~~**Applicability**~~
~~**23-921**~~
~~**R10 Districts**~~

~~The Inclusionary Housing Program shall apply in all R10 Districts located in #Inclusionary Housing designated areas#, subject to the provisions relating to such designated areas , and in all other R10 Districts, subject to the provisions of Section 23-941 (In R10 Districts other than Inclusionary Housing designated areas), as applicable.~~

~~**23-922**~~
~~**Inclusionary housing designated areas**~~

~~The Inclusionary Housing Program shall apply in the following areas:~~

~~(a) In Community District 1, in the Borough of Brooklyn, in Waterfront Access Plan BK-1, as set forth in Section 62-352, and in the R6, R6A, R6B and R7A Districts within the areas shown on the following Maps 1 and 2:~~

(map deleted)

~~Map 1~~
~~Portion of Community District 1, Brooklyn~~

(map deleted)

~~Map 2~~
~~Portion of Community District 1, Brooklyn~~

~~(b) In Community District 1, in the Borough of Brooklyn, in the R7-3 Districts within the area shown on the following Map 3:~~

(map deleted)

~~Map 3~~
~~Portion of Community District 1, Brooklyn~~

~~(c) In Community District 7, in the Borough of Brooklyn, in the R8A District within the area shown on the following Map 4:~~

(map deleted)

~~Map 4~~
~~Portion of Community District 7, Brooklyn~~

~~(d) In Community District 2, in the Borough of Queens, in the R7X Districts within the areas shown on the following Maps 5 and 6:~~

(map deleted)

~~Map 5~~
~~Portion of Community District 2, Queens~~

(map deleted)

~~Map 6~~
~~Portion of Community District 2, Queens~~

~~(e) In Community District 2, in the Borough of Brooklyn, in the R7A Districts within the areas shown on the following Maps 7, 8 and 9:~~

(map deleted)

~~Map 7~~
~~Portion of Community District 2, Brooklyn~~

(map deleted)

~~Map 8~~
~~Portion of Community District 2, Brooklyn~~

(map deleted)

~~Map 9~~
~~Portion of Community District 2, Brooklyn~~

~~(f) In Community District 7, in the Borough of Manhattan, in the R9A Districts within the areas shown on the following Map 10:~~

(map deleted)

~~Map 10~~
~~Portion of Community District 7, Manhattan~~

~~(g) In Community District 3, in the Borough of Brooklyn, in the R7D Districts within the areas shown on the following Maps 11 and 12:~~

(map deleted)

~~Map 11~~
~~Portion of Community District 3, Brooklyn~~

(map deleted)

~~Map 12~~
~~Portion of Community District 3, Brooklyn~~

~~(h) In Community District 6, in the Borough of Manhattan, in the R10 Districts within the areas shown on the following Map 13:~~

(map deleted)

~~Map 13~~
~~Portion of Community District 6, Manhattan~~

~~(i) In Community District 3, in the Borough of Manhattan, in the R7A, R8A and R9A Districts within the areas shown on the following Map 14:~~

(map deleted)

~~Map 14~~
~~Portion of Community District 3, Manhattan~~

~~The Inclusionary Housing Program shall apply in special purpose districts when specific zoning districts or areas are defined as #Inclusionary Housing designated areas# within the special purpose district~~.

~~**23-93**~~
Definitions

For the purposes of ~~the inclusionary housing program~~ this Section 23-90 (INCLUSIONARY HOUSING), inclusive, matter in italics is defined either in Section 12-10 (DEFINITIONS) or in this Section.

23-911
General Definitions

The following definitions shall apply throughout this Section 23-90 (INCLUSIONARY HOUSING), inclusive:

Administering agent

~~The~~ An "administering agent" is the entity ~~or entities identified in the #lower income housing plan# as~~ responsible for ensuring, pursuant to a #regulatory agreement#:

(a) that each subject rental #affordable housing unit# is rented in compliance with such ~~plan.~~ #regulatory agreement# at #rent-up# and upon each subsequent vacancy; or

(b) that each subject #homeownership affordable housing units# is owned and occupied in compliance with such #regulatory agreement# at #sale# and upon each #resale#.

~~The #administering agent# shall be a not-for-profit organization, unless the Commissioner of Housing Preservation and Development finds that a good faith effort by the developer of the #compensated development# to secure a qualified not-for-profit organization as the #administering agent# was unsuccessful. However, in #Inclusionary Housing designated areas#, the Commissioner may approve an entity that is responsible for compliance monitoring pursuant to City, State or Federal funding sources, to serve as the #administering agent# during such compliance period.~~

Affordable floor area

(a) Where all of the #dwelling units#, #rooming units# and #supportive housing units# in a #generating site#, other than any #super's unit#, are #affordable housing units#, all of the #residential floor area#, or #community facility floor area# for a #supportive housing project#, in such #generating site# is “affordable floor area”.

(b) Where one or more of the #dwelling units# or #rooming units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#, the “affordable floor area” in such #generating site# is the sum of:

(1) all of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site#; plus

(2) a figure determined by multiplying the #residential floor area# of the #eligible common areas# in such #generating site# by a fraction, the numerator of which is all of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site# and the denominator of which is the sum of the #residential floor area# within the perimeter walls of the #affordable housing units# in such #generating site# plus the #residential floor area# within the perimeter walls of the #dwelling units# or #rooming units# in such #generating site#, other than any #super's unit#, that are not #affordable housing units#.

Affordable housing

"Affordable housing" consists of:

(a) #affordable housing units#; and

(b) #eligible common areas#.

Affordable housing plan

An "affordable housing plan" is a plan approved by #HPD# to #develop#, rehabilitate or preserve rental or #homeownership affordable housing# pursuant to the provisions of this Section 23-90 (INCLUSIONARY HOUSING), inclusive.

Affordable housing unit

An "affordable housing unit" is:

(a) a #dwelling unit#, other than a #super's unit#, that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by:

(1) #low income households#;

(2) where permitted by Section 23-953 (Special provisions in specified areas), either #low income households# or a combination of #low income households# and #moderate income households# or #middle income households#; or

(3) upon #resale# of #homeownership affordable housing units#, other #eligible buyers#, as applicable;

(b) a #rooming unit#, other than a #super's unit#, that is used for class B occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a #regulatory agreement#, to occupancy by a #low income households#; or

(c) a #supportive housing unit# within a #supportive housing project#.

#Affordable housing units# that are restricted to #homeownership#, as defined in Section 23-913, pursuant to a #regulatory agreement#, must be #dwelling units#.

Capital element

"Capital elements" are, with respect to any #generating site#, the electrical, plumbing, heating and ventilation systems in such #generating site#, any air conditioning system in such #generating site# and all facades, parapets, roofs, windows, doors, elevators, concrete and masonry in such #generating site# and any other portions of such #generating site# specified in the #guidelines#.

Compensated development

A "compensated development" is a #development#, an #enlargement# of more than 50 percent of the #floor area# of an existing #building# or, where permitted by the provisions of Section 23-953(d), a conversion of a non-#residential building#, or portion thereof, to #dwelling units#, that is located within a #compensated zoning lot# ~~which receives an increased #floor area ratio# as a result of satisfying the requirements of the inclusionary housing program~~.

Compensated zoning lot

A “compensated zoning lot” is a #zoning lot# that contains a #compensated development# and receives an increased #floor area ratio# pursuant to the provisions of this Section 23-90 (INCLUSIONARY HOUSING), inclusive.

Completion notice

A "completion notice" is a notice from #HPD# to the Department of Buildings stating that the #affordable housing# in all or a portion of any #generating site# is complete and stating the #affordable floor area# of such #affordable housing#.

~~**Development**~~

~~For the purposes of this program, a "development" is a #development# as defined in Section 12-10, or an #enlargement# of more than 50 percent of the #floor area# of an existing #building#.~~

~~**Fair rent**~~

~~At initial occupancy of #lower income housing#, "fair rent" (the "Section 8 Standard") is an annual rent for each such housing equal to not more than either the public assistance shelter allowance if the #family# receives public assistance, or 30 percent of the annual income of the tenant of such housing, provided that such tenant is a #lower income household# at the time of initial occupancy pursuant to the provisions of this program.~~

~~Upon renewal of a lease for an existing tenant in #lower income housing#, #fair rent# (the "Rent Stabilization Standard") is not more than the then-current #fair rent# for such housing plus a percentage increase equal to the percentage increase for a renewal lease of the same term permitted by the Rent Guidelines Board for units subject to the rent stabilization law.~~

~~After initial occupancy, upon rental of #lower income housing# to a new tenant, #fair rent# is not more than the higher of:~~

~~(a) the then-currently applicable "Section 8 Standard"; or~~

~~(b) the Rent Stabilization Standard.~~

~~In order for rent to be #fair rent#, the following must also apply:~~

~~There shall be no additional charge to the tenant for the provision of heat and electric~~

~~service, except that the Commissioner of Housing Preservation and Development may approve a #lower income housing plan# making a #lower income household# responsible for the payment of utilities as long as the sum of:~~

~~(1) the initial #fair rent#; and~~

~~(2) the monthly costs of a reasonable compensation for these utilities, by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment do not exceed 30 percent of said #lower income household's# income.~~

~~However, in # Inclusionary Housing designated areas#, the Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of City, State or Federal programs assisting #lower income housing# will be considered #fair rent#, provided that such rents do not exceed 30 percent of #lower income household•s# income, as applicable, and provided further that upon expiration or termination of the requirements of the City, State or Federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable Section 8 Standard or the Rent Stabilization Standard.~~

~~At initial occupancy of any #lower income housing#, no portion of the #fair rents# shall be for the payment of the principal or interest on any debt, and the #lower income housing# shall not secure any debt and shall be free of all liens, except liens for real estate taxes, water charges and sewer rents and other governmental charges for which payment is not yet due. #Fair rents# may be used for the payment of principal or interest of debt only if such debt was incurred after the date of initial occupancy and is for a capital improvement to such #lower income housing# other than those capital improvements set forth in the #lower income housing plan#.~~

~~In # Inclusionary Housing designated areas#, at initial occupancy of any #lower income housing#, a portion of the #fair rents# may be for the payment of the principal or interest on debt, and such housing may secure debt, provided that, as of the date of the approval of the #lower income housing plan#, the Commissioner of Housing Preservation and Development finds that the total annual rent, when such interest and principal payments are deducted, is in compliance with the requirements of Section 23-95, paragraph(c), and provided that the lender agrees to enter into a written agreement which subordinates such debt to the provisions of the #lower income housing plan#.~~

~~Inclusionary Housing designated areas~~

~~"Inclusionary Housing designated areas" shall be those areas specified in Section 23-922 (Inclusionary Housing designated areas).~~

~~Lower income household~~

~~A "lower income household" is a #family# having an income equal to or less than the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U.S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments.~~

~~In #Inclusionary Housing designated areas#, #lower income households# shall also include all existing households in tenancy, provided such households occupy units that are within a #building# in which rents for all occupied units are regulated by City or State law, and the aggregate maximum permitted annual rent roll for such occupied units, divided by the number of occupied units, is less than 30 percent of the applicable income limit for a #lower income household# as provided in this Section. In determining the applicable income limit for such #lower income households#, the Commissioner of Housing Preservation and Development may make adjustments, consistent with U. S. Department of Housing and Urban Development regulations, for the number of persons residing in each unit.~~

~~Lower income housing~~

~~"Lower income housing" are #standard units# occupied or to be occupied by #lower income households#. #Lower income housing# shall not include #standard units# assisted under city, state or federal programs, except where such assistance is in the form of:~~

~~(a) real estate tax abatements and exemptions which are specifically limited to the #lower income housing#; or~~

~~(b) operating assistance that the Commissioner of the Department of Housing Preservation and Development determines will be used to enable households with incomes of not more than 62.5 percent of the "80 Percent of SMSA Limits" to afford such #lower income housing#.~~

~~However, in # Inclusionary Housing designated areas#, #lower income housing# shall include #standard units# assisted under City, State or Federal programs.~~

~~**Lower income housing plan**~~

~~The "lower income housing plan," is the plan accepted by the Commissioner of Housing Preservation and Development, which sets forth the developer's plans for creating and maintaining the specified #lower income housing# pursuant to this program, including but not limited to, choice of #administering agent#, tenant selection, rent levels in the #lower income housing# and income verification of tenants pursuant to paragraphs (b), (c) and (d) of Section 23-95.~~

~~**Standard unit**~~

~~A "standard unit" is a:~~

~~(a) #dwelling unit#;~~

~~(b) #rooming unit#; or~~

~~(c) room used for sleeping purposes in a non-profit institution with sleeping accommodations, which room is acceptable to the Commissioner of Housing Preservation and Development as meeting the intent of the Inclusionary Housing program.~~

~~In each case, it shall be free of violations (and located in a #building# in which the common areas are free of violations) under the City of New York Building Code, the New York State Multiple Dwelling Law, the New York City Housing Maintenance Code and this Resolution as noted in or issued by a city or state agency as of the date of acceptance of the #lower income housing plan#.~~

~~In #standard units#, all windows shall be double glazed.~~

Eligible common area

"Eligible common area" includes any #residential floor area# in a #generating site# that is located within the perimeter walls of a #super's unit#, and also includes any #residential floor area# in such #generating site# that is not located within the perimeter walls of any other #dwelling unit# or #rooming unit#, except any #residential floor area# for which a user fee is charged to residents of #affordable housing units#.

Floor area compensation

"Floor area compensation" is any additional #residential floor area# permitted in a #compensated development# pursuant to the provisions of this Section 23-90 (INCLUSIONARY HOUSING), inclusive.

Generating site

A "generating site" is a #building# or #building segment# containing either #residential affordable floor area#, or a #supportive housing project#, that generates #floor area compensation#. Non-#residential floor area# on a #generating site#, other than a #supportive housing project#, may not generate #floor area compensation#.

Grandfathered tenant

A "grandfathered tenant" is any #household# that:

(a) occupied an #affordable housing unit# in #preservation affordable housing# or #substantial rehabilitation affordable housing# on the #regulatory agreement date# pursuant to a lease, occupancy agreement or statutory tenancy under which one or more members of such #household# was a primary tenant of such #affordable housing unit#; and

(b) has not been certified by the #administering agent# to have an annual income below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #affordable housing unit#; or

(c) in #homeownership preservation affordable housing# or #homeownership substantial rehabilitation affordable housing#, has been certified by the #administering agent# to have an annual income below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #affordable housing unit#, but has elected not to purchase such #affordable housing unit#.

Guidelines

The "guidelines" are the guidelines adopted by #HPD# pursuant to paragraph (k) of Section 23-96 (Requirements for Generating Sites).

Household

Prior to #initial occupancy# of an #affordable housing unit#, a "household" is, collectively, all of the persons intending to occupy such #affordable housing unit# at #initial occupancy#. After #initial occupancy# of an #affordable housing unit#, a "household" is, collectively, all of the persons occupying such #affordable housing unit#.

HPD

"HPD" is the Department of Housing Preservation and Development or its successor agency or designee, acting by or through its Commissioner or his or her designee.

Income index

The "income index" is 125 percent of the income ceiling established by the U.S. Department of Housing and Urban Development (HUD) pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for low-income families receiving housing assistance payments in New York City, as adjusted for #household# size. #HPD# shall adjust such figure for the number of persons in a #household# in accordance with such methodology as may be specified by HUD or in the #guidelines#. #HPD# may round such figure to the nearest 50 dollars or in accordance with such methodology as may be specified by #HUD# or in the #guidelines#. If HUD ceases to establish, or changes the standards or methodology for the establishment of, such income ceiling or ceases to establish the methodology for adjusting such figure for #household# size, the standards and methodology for establishment of the #income index# shall be specified in the #guidelines#, in a manner consistent with the standards and methodology in effect on [date of enactment].

Initial occupancy

"Initial occupancy" is:

(a) in rental #affordable housing#, the first date upon which a particular #household# occupies a particular #affordable housing unit# as a tenant, and shall not refer to any subsequent renewal lease of the same #affordable housing unit# to the same tenant #household#; or

(b) in #homeownership affordable housing#, the first date upon which a particular #household# occupies a particular #affordable housing unit# as a #homeowner#.

For any #household# occupying an #affordable housing unit# of #preservation affordable housing# or #substantial rehabilitation affordable housing# on the #regulatory agreement date#, "initial occupancy" is the #regulatory agreement date#.

Low income floor area

The "low income floor area" is the #affordable floor area# that is provided for #low income households# or, upon #resale# as defined in Section 23-913, #eligible buyers#.

Low income household

A "low income household" is a #household# having an income less than or equal to the #low income limit# at #initial occupancy#, except that, with regard to #low income floor area# within #preservation affordable housing# or #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #low income household#.

Low income limit

The "low income limit" is 80 percent of the #income index#.

Middle income floor area

The "middle income floor area" is the #affordable floor area# that is provided for #middle income households# or, upon #resale# as defined in Section 23-913, for #eligible buyers#.

Middle income household

A “middle income household” is a #household# having an income greater than the #moderate income limit# and less than or equal to the #middle income limit# at #initial occupancy#, except that, with regard to #middle income floor area# within #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #middle income household#.

Middle income limit

The “middle income limit” is 175 percent of the #income index#.

Moderate income floor area

The "moderate income floor area" is the #affordable floor area# that is provided for #moderate income households# or, upon #resale# as defined in Section 23-913, for #eligible buyers#.

Moderate income household

A “moderate income household” is a #household# having an income greater than the #low income limit# and less than or equal to the #moderate income limit# at #initial occupancy#, except that, with regard to #moderate income floor area# within #substantial rehabilitation affordable housing#, a #grandfathered tenant# shall also be a #moderate income household#.

Moderate income limit

The “moderate income limit” is 125 percent of the #income index#.

New construction affordable housing

"New construction affordable housing" is #affordable housing# that:

(a) is located in a #building# or portion thereof that did not exist on a date which is 36 months prior to the #regulatory agreement date#;

(b) is located in #floor area# for which the Department of Buildings first issued a temporary or permanent certificate of occupancy on or after the #regulatory agreement date#; and

(c) complies with such additional criteria as may be specified by #HPD# in the #guidelines#.

Permit notice

A "permit notice" is a notice from #HPD# to the Department of Buildings stating that building permits may be issued to a #compensated development# to utilize #floor area compensation# from all or a portion of the #affordable floor area# on a #generating site#. Any #permit notice# shall:

(a) state the amount of #low income floor area#, #moderate income floor area#, or #middle income floor area# attributable to such #generating site#;

(b) state whether the #affordable housing# comprising such #low income floor area#, #moderate income floor area#, or #middle income floor area# is #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#;

(c) state whether the #affordable housing# comprising such #low income floor area#, #moderate income floor area#, or #middle income floor area# has utilized #public funding#; and

(d) specify the amount of such #affordable housing# that the #compensated development# may utilize to generate #floor area compensation#.

Preservation affordable housing

"Preservation affordable housing" is #affordable housing# that:

(a) is a #generating site# that existed and was legally permitted to be occupied on the #regulatory agreement date#, except as permitted in the #guidelines#; and

(b) complies with the provisions of Section 23-961(e) (Special requirements for rental #preservation affordable housing#) or Section 23-962(f) (Special requirements for #homeownership preservation affordable housing#), as applicable.

Public funding

"Public funding" is any grant, loan or subsidy from any federal, state or local agency or instrumentality, including, but not limited to, the disposition of real property for less than market value, purchase money financing, construction financing, permanent financing, the utilization of bond proceeds and allocations of low income housing tax credits. "Public funding" shall not include the receipt of rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, or an exemption or abatement of real property taxes pursuant to Section 420-

a, Section 420-c, Section 421-a, Section 422, Section 488-a, or Section 489 of the Real Property Tax Law, Article XI of the Private Housing Finance Law or such other programs of full or partial exemption from or abatement of real property taxation as may be specified in the #guidelines#.

Regulatory agreement

A "regulatory agreement" is an agreement between #HPD# and the owner of the #affordable housing# that requires compliance with all applicable provisions of an #affordable housing plan#, Section 23-90 (INCLUSIONARY HOUSING), inclusive and the #guidelines#.

Regulatory agreement date

The "regulatory agreement date" is, with respect to any #affordable housing#, the date of execution of the applicable #regulatory agreement#. If a #regulatory agreement# is amended at any time, the "regulatory agreement date" is the original date of execution of such #regulatory agreement#, without regard to the date of any amendment.

Regulatory period

The "regulatory period" is, with respect to any #generating site#, the entire period of time during which any #floor area compensation# generated by the #affordable floor area# on such #generating site# is the subject of a permit, temporary certificate of occupancy or permanent certificate of occupancy issued by the Department of Buildings or is otherwise under construction or in #use# in a #compensated development#.

Substantial rehabilitation affordable housing

"Substantial rehabilitation affordable housing" is #affordable housing# that:

(a) is a #generating site# that existed on the #regulatory agreement date#, and

(b) complies with the provisions of Section 23-961(f) (Special requirements for rental #substantial rehabilitation affordable housing#) or Section 23-962(g) (Special requirements for homeownership substantial rehabilitation affordable housing), as applicable.

Super's unit

A "super's unit" is, in any #generating site#, not more than one #dwelling unit# or #rooming unit# that is reserved for occupancy by the superintendent of such #building#.

23-912
Definitions Applying to Rental Affordable Housing

The following definitions shall apply to rental #affordable housing#:

Legal regulated rent

A "legal regulated rent" is, with respect to any #affordable housing unit#, the initial #monthly rent# registered with the Division of Housing and Community Renewal at #rent-up# in accordance with paragraph (b) of Section 23-961 (Additional Requirements for Rental Affordable Housing), as subsequently adjusted in accordance with #rent stabilization#.

Maximum monthly rent

The "maximum monthly rent" is:

(a) 30 percent of the #low income limit# for an #affordable housing unit# restricted to occupancy by #low income households#, divided by 12, minus the amount of any applicable #utility allowance#; and

(b) 30 percent of the #moderate income limit# for an #affordable housing unit# restricted to occupancy by #moderate income households#, divided by 12, minus the amount of any applicable #utility allowance#; and

(c) 30 percent of the #middle income limit# for an #affordable housing unit# restricted to occupancy by #middle income households#, divided by 12, minus the amount of any applicable #utility allowance#.

Monthly Rent

The "monthly rent" is the monthly amount charged, pursuant to paragraph (b) of Section 23-961 (Additional Requirements for Rental Affordable Housing), to a tenant in an #affordable housing unit#.

Rent stabilization

"Rent stabilization" is the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974 and all regulations promulgated pursuant thereto or in connection therewith. If the Rent Stabilization Law of 1969 or the Emergency Tenant Protection Act of 1974 is repealed, invalidated or allowed to expire, “rent stabilization” shall be defined as set forth in the #guidelines#.

Rent-up

"Rent-up" is the first rental of vacant #affordable housing units# on or after the #regulatory agreement date#, except that, where one or more #affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, "rent-up" shall have the same meaning as #regulatory agreement date#.

Rent-up date

The "rent-up date" is the date upon which leases for a percentage of vacant #affordable housing units# set forth in the #guidelines# have been executed, except that, where one or more #affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, the "rent-up date" is the #regulatory agreement date#.

Supportive housing project

A "supportive housing project" is a non-profit institution with sleeping accommodations as specified in Section 22-13 (Use Group 3), where:

(a) 100 percent of the #supportive housing units# within such #generating site#, have been restricted to use as #affordable housing# for persons with special needs pursuant to a #regulatory agreement#; and

(b) such #generating site# does not contain any #dwelling unit# or #rooming unit# that is not #accessory#; and

(c) such #generating site# is not a #compensated development#.

Supportive housing unit

A "supportive housing unit" is #floor area# in a #supportive housing project# that consists of sleeping quarters for persons with special needs and any private living space appurtenant thereto.

Utility allowance

A "utility allowance" is a monthly allowance set by #HPD# 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 #affordable housing unit# in addition to any payments of #monthly rent#.

23-913
Definitions Applying to Homeownership Affordable Housing

The following definitions shall apply to #homeownership affordable housing#, where #homeownership# is as defined in this Section 23-913:

Appreciated price

The “appreciated price” for any #homeownership affordable housing unit# is the #initial price# of such #homeownership affordable housing unit# plus the product of such #initial price# and the #appreciation index# at the time of #resale#.

Appreciation cap

The “appreciation cap” is the #resale# price at which the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid by the #homeowner# would be equal to 30 percent of:

(a) 125 percent of the #income index# for an #homeownership affordable housing unit# that was restricted to occupancy by #low income households# at #sale#; or

(b) 175 percent of the #income index# for an #homeownership affordable housing unit# that was restricted to occupancy by #moderate income households# at #sale#; or

(c) 200 percent of the #income index# for an #homeownership affordable housing unit# that was restricted to occupancy by #middle income households# at #sale#.

Appreciation Index

The “appreciation index” is a fraction expressing the permitted increase in the #resale# price of #homeownership affordable housing units#. The numerator of such fraction represents the percentage increase since the initial #sale# permitted pursuant to the annual rate of increase established by #HPD# for the #resale# price of #homeownership affordable housing units#, plus 100, and the denominator is 100. #HPD# shall initially set such annual rate of increase at 5 percent per year and may adjust such rate not more than once every two years in accordance with the #guidelines#.

Commencement date

The "commencement date" is the date upon which #sales# for a percentage of #homeownership affordable housing units# in a #generating site# set forth in the #guidelines# have been completed, except that, where one or more #homeownership affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# were occupied by #grandfathered tenants# on the #regulatory agreement date#, the "commencement date" is the #regulatory agreement date#.

Condominium Association

A “condominium association” is an organization of condominium #homeowners#, with a form of governance specified in the #guidelines#, that manages the common areas and #capital elements# of a #generating site#.

Cooperative corporation

A “cooperative corporation” is any corporation organized exclusively for the purpose of providing housing accommodations to shareholders who are persons or families entitled, by reason of ownership of shares in such corporation, to residential occupancy.

Down Payment

The “down payment” is a payment that is not secured by any form of debt, made on or before the #sale date# by the #eligible buyer# approved by the #administering agent# to purchase an #homeownership affordable housing unit#.

Eligible Buyer

An “eligible buyer” is a #household# that qualifies to buy a specific #homeownership affordable housing unit#. Such a #household# shall:

(a) except in the case of #succession#:

(i) be, at initial #sale#, a #low income household#, #moderate income household#, or #middle income household# for which, at the #initial price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income; or

(ii) be, at #resale#, in the case of an #affordable housing unit# initially limited to #sale# to a #low income household#, #moderate income household#, or #middle income households#, any #household# for which, at the #maximum resale price#, the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes that would be paid for a #homeownership affordable housing unit# is not more than 35 percent and not less than 25 percent of such #household's# income;

(iii) have cash or equivalent assets that are at least equal to the required #down payment# for such #affordable housing unit#; and

(iv) meet such additional eligibility requirements as may be specified in the #guidelines#.

(b) in the case of #succession#:

(i) have an income no greater than product of the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to the #homeownership affordable housing unit# at #initial sale#, and taking into account any subsequent adjustments, multiplied by the #appreciation index#; and

(ii) meet such additional eligibility requirements as may be specified in the #guidelines#.

A #grandfathered tenant# is not an #eligible buyer# unless such #grandfathered tenant# has been certified by the #administering agent# to have an annual income at or below the #low income limit#, #moderate income limit# or #middle income limit#, as applicable to such #homeownership affordable housing unit#.

Family Member

"Family member" shall have the meaning set forth in the #guidelines#.

Homeowner

A "homeowner" is a person or persons who:

(a) owns a condominium #homeownership affordable housing unit# and occupies such condominium #homeownership affordable housing unit# in accordance with owner occupancy requirements set forth in the #guidelines#, or

(b) owns shares in a #cooperative corporation#, holds a proprietary lease for an #homeownership affordable housing unit# owned by such #cooperative corporation# and occupies such #homeownership affordable housing unit# in accordance with owner occupancy requirements set forth in the #guidelines#.

Homeownership

"Homeownership" is a form of tenure for housing, including #dwelling units# occupied by either the owner as a separate condominium, a shareholder in a #cooperative corporation# pursuant to the terms of a proprietary lease, a #grandfathered tenant# or an authorized sublettor pursuant to the #guidelines#.

Initial price

The "initial price" is the price at which a #homeownership affordable housing unit# may be offered for #sale# for the first time pursuant to a #regulatory agreement#.

Maximum resale price

The #maximum resale price# for a #homeownership affordable housing unit# is the lesser of the #appreciated price# or the #appreciation cap# for such # homeownership affordable housing unit#.

Monthly Fees

The "monthly fees" are any payments charged to a #homeowner# by a #cooperative corporation# or #condominium association# to provide for the reimbursement of the applicable #homeownership affordable housing unit#'s share of the expenses of such #cooperative corporation# or #condominium association# as permitted by the #regulatory agreement#.

Mortgage

An "mortgage" is a mortgage loan, or a loan to purchase shares in a #cooperative corporation#, that has been approved by the #administering agent# and that has a fixed rate of interest, a term of at least 30 years, a value not exceeding 90 percent of the #sale# price of such #homeownership affordable housing unit# at the time of the initial #sale# or 90 percent of the #maximum resale price# of such #homeownership affordable housing unit# at any time after the initial #sale#, and that is otherwise in compliance with the #guidelines#.

Mortgage Payment

The "mortgage payment" is any monthly repayment of principal and interest on a #mortgage#.

Resale

A “resale” is any transfer of title to a condominium #homeownership affordable housing unit# after the first #sale# or any transfer of ownership of the shares in a #cooperative corporation# which are appurtenant to an #homeownership affordable housing unit# after the first #sale#.

Sale

A “sale” is the first transfer of title to a condominium #homeownership affordable housing unit# or the first transfer of ownership of the shares in a #cooperative corporation# which are appurtenant to an #homeownership affordable housing unit# on or after the #regulatory agreement date#.

Sale date

A “sale date” is the date of the #sale# or #resale# of any #homeownership affordable housing unit#. However, for #homeownership affordable housing units# in #preservation affordable housing# or #substantial rehabilitation affordable housing# occupied by #grandfathered tenants# on the #regulatory agreement date#, the initial #sale date# shall be the #regulatory agreement date#”.

Succession

“Succession” is a #resale# from a #homeowner# to a #family member# of such #homeowner#.

23-92
General Provisions

The Inclusionary Housing Program is established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and thus to promote the general welfare. The requirements of this program are set forth in this Section 23-90 (INCLUSIONARY HOUSING), inclusive.

Wherever the provisions of this Section 23-90 (INCLUSIONARY HOUSING), inclusive, provide that approval is required, #HPD# may specify the form of such approval in the #guidelines#.

23-93
Applicability

23-931
Lower income housing plans approved prior to (date of enactment)

Any #lower income housing plan#, as defined by Section 23-93 of this Resolution prior to (date of enactment), that has been approved by #HPD# prior to such date, and results, within one year after such approval, in the execution of a restrictive declaration pursuant to Section 23-95(e), as such Section existed prior to (date of enactment), shall be governed solely by the regulations in effect prior to (date of enactment) unless a #regulatory agreement# with respect thereto specifically provides to the contrary. However, Sections 23-954(b) and (c) shall apply to any permits or certificates of occupancy for #compensated developments# issued on or after (date of enactment).

The #floor area ratio# of a #compensated development# may be increased in exchange for #lower income housing#, pursuant to a #lower income housing plan#, as both terms were defined by Section 23-93 of this Resolution prior to (date of enactment), provided such #lower income housing# complies with all applicable provisions of Section 23-90 (INCLUSIONARY HOUSING) in effect prior to (date of enactment), except as provided in this Section. Where such a #compensated development# is located in an R10 district outside of #Inclusionary Housing designated areas#, the provisions of Section 23-951 (Floor area compensation in R10 districts other than Inclusionary Housing designated areas) shall not apply, and paragraph (a) of Section 23-94 (Floor Area Compensation) as such section existed prior to (date of enactment) shall apply;

Any previously approved #lower income housing plan#, as such term was defined prior to (date of enactment), and any legal document related thereto, may be modified by #HPD#, to apply the provisions of Section 23-961(b) (Monthly Rent) to such #lower income housing plan#.

23-932
R10 Districts

The Inclusionary Housing Program shall apply in all R10 Districts located in #Inclusionary Housing designated areas#, subject to the provisions of Section 23-952. The Inclusionary Housing Program shall apply in all other R10 Districts, subject to the provisions of Section 23-951 (In R10 Districts other than Inclusionary Housing designated areas), as applicable.

23-933
Inclusionary housing designated areas

The Inclusionary Housing Program shall apply in #inclusionary housing designated areas#.

The Inclusionary Housing Program shall also apply in special purpose districts when specific zoning districts or areas are defined as #Inclusionary Housing designated areas# within the special purpose district.

#Inclusionary Housing designated areas# are listed in Appendix A of this Chapter.

23-94
Methods of Providing Affordable Housing

(a) #Affordable housing# shall be either #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing#.

(b) When determining whether #affordable housing# is #new construction affordable housing#, #substantial rehabilitation affordable housing# or #preservation affordable housing# in order to calculate #floor area compensation#, or when making a determination of which #building# or #building segment# constitutes a #generating site#, #HPD# may separately consider each #building# or #building segment# on a #zoning lot#. Where any such #building# consists of two or more contiguous sections separated by walls or other barriers, #HPD# may consider all relevant facts and circumstances when determining whether to consider the sections of such #building# separately or collectively, including, but not limited to, whether such sections share systems, utilities, entrances, common areas or other common elements and whether such sections have separate deeds, ownership, tax lots, certificates of occupancy, independent entrances, independent addresses or other evidence of independent functional use.

(c) The amount of #affordable floor area# in any #generating site# shall be determined based upon plans for such #generating site# which have been approved by the Department of Buildings and which indicate thereon the amount of #floor area# devoted to #affordable housing# and the amount of #floor area# devoted to other #residential# uses. However, for #generating sites# where the Department of Buildings does not require #floor area# calculations, the amount of #affordable floor area# shall be determined by methods specified in the guidelines.

(d) The amount of #low income#, #moderate income# and #middle income floor area# in a #generating site# shall be determined in the same manner as the calculation of #affordable floor area#.

(e) #Affordable housing units# shall be either rental #affordable housing# or #homeownership affordable housing#.

23-95
~~Floor Area Compensation~~

Compensated Zoning Lots

23-~~941~~951
Floor area compensation i~~I~~n R10 districts other than Inclusionary Housing designated areas

The #residential floor area ratio# of a #compensated zoning lot ~~development#~~ may be increased from 10.0 to a maximum of 12.0 at the rate set forth in this Section, if ~~the developer of~~ such #compensated zoning lot ~~development#~~ provides #~~lower income~~ affordable housing# that is restricted to #low income floor area# ~~pursuant to Section 23-95 (Lower Income Housing Requirements)~~.

For each square foot of #floor area# provided for #~~lower income~~ a type of #affordable housing# listed in Column A ~~and which meets the requirements set forth in Section 23-95~~, the #floor area# of the #compensated zoning lot ~~development#~~ may be increased by the number of square feet set forth in Column B. Any #generating site# for which #public funding# has been received within the 15 years preceding the #regulatory agreement date#, or for which #public funding# is committed to be provided subsequent to such date, shall be deemed to be provided with #public funding#.

OPTIONS

Column A	Column B
~~On-site~~ Without #public funding#:	
#New Construction Affordable Housing# or #Substantial Rehabilitation Affordable Housing#	3.~~7~~5
Without #public funding#:	
#Preservation Affordable Housing#	2.0
With #public funding#:	
#New Construction Affordable Housing#, #Substantial Rehabilitation Affordable Housing# or #Preservation Affordable Housing#	1.25
~~On-site Substantial Rehabilitation~~	~~3.2~~
~~Off-site New Construction (Private Site)~~	~~4.0~~
~~Off-site New Construction (Public Site)*~~	~~2.5~~
~~Off-site Substantial Rehabilitation (Private Site)~~	~~3.7~~

~~* Public sites are those made available for this program by a public agency at nominal cost.~~

~~Each structure erected and recorded as a separate #building# at the Department of Buildings as of January 1, 1987, may be considered individually in determining if #lower income housing# provided pursuant to this program shall be considered as substantial rehabilitation or preservation.~~

23-94~~5~~2
Floor area compensation in Inclusionary Housing designated areas

The provisions of this Section shall apply in ~~the~~ #Inclusionary Housing designated areas# ~~set forth in Section 23-922, except within Waterfront Access Plan BK-1 and in R7-3 Districts within Community District 1, Borough of Brooklyn~~ .

~~(a)~~ Maximum #residential floor area ratio#

The #residential floor area# of a ~~#development# or #enlargement#~~ #zoning lot# may not exceed the base #floor area ratio# set forth in the following table, except that such #floor area# may be increased on a #compensated zoning lot# by ~~one and one-quarter~~ 1.25 square feet for each square foot of #low income floor area# provided ~~for #lower income~~, up to the maximum #floor area ratio# specified in the table. However, the amount of ~~#lower income~~ low income floor area# required to receive such ~~bonus~~ #floor area compensation# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, ~~in~~ on the ~~#building~~ compensated zoning lot#. ~~In addition, the following rules shall apply:~~

District	Base #floor area ratio#	Maximum #floor area ratio#
R6*	2.2	2.42
R6**, R6A	2.7	3.6
~~R6A~~	~~2.7~~	~~3.6~~
R6B	2.0	2.2
R7A	3.45	4.6
R7D	4.2	5.6
R7X	3.75	5.0
R8, R8A	5.40	7.2
R9	6.0	8.0
R9A	6.5	8.5
R10	9.0	12.0

---

* for #zoning lots#, or portions thereof, beyond 100 feet of a #wide street#

** for #zoning lots#, or portions thereof, within 100 feet of a #wide street#

~~(b) Height and setback~~

~~(1) Except in #Special Mixed Use Districts#, the compensated #building# must be #developed# or #enlarged# pursuant to the height and setback regulations of Sections 23-633 (Street wall location and height and setback regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), as applicable.~~

~~(2) In #Special Mixed Use Districts#, where the #residence district# designation has a letter suffix, the compensated #building# must be #developed# or #enlarged# pursuant to paragraph (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations). Where the #residence district# designation does not have a letter suffix, the compensated #building# must be #developed# or #enlarged# pursuant to the height and setback regulations of Section 23-633 regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program.~~

~~(c) #Lower income housing# requirements~~

~~The #lower income housing# must be provided in accordance with the provisions set forth in Section 23-95 (Lower Income Housing Requirements).~~

23-953
Special floor area compensation provisions in specified areas

(a~~d~~) Optional provisions for #general large-scale developments# in C4-6 or C5 Districts

Within a #general large-scale development# in a C4-6 or C5 District, the special optional regulations as set forth in this paragraph (a)~~(d)~~, inclusive, modify the provisions of ~~paragraphs (a) and (c) of this Section,~~ Section 23-~~93 (Definitions) and Section 23-95 (Lower Income Housing Requirements)~~952 (In inclusionary housing designated areas):

(1) ~~For the purposes of this paragraph, (d), inclusive, the definitions of #moderate income household# and #fair rent# in Section 93-231 (Definitions) shall apply.~~

~~"Moderate income housing" shall be defined as #standard units# occupied or to be occupied by #moderate income households#, and "middle income housing" shall be defined as #standard units# occupied or to be occupied by #middle income households#. #Moderate income housing# and #middle income housing# shall be considered #lower income housing# for the purposes of the definition of #lower income housing plan# in Section 23-93.~~

~~(2)~~ The #residential floor area# of a #development# or #enlargement# may ~~not exceed the base #floor area ratio# set forth in the table in Section 23-942, except that the #floor area# of a #development# or #enlargement# may be increased up to the maximum #floor area ratio# specified in the table in 23-942, as follows:~~

~~(i) the #floor area# of a #development# or #enlarge-ment# may be increased by one and one-quarter square feet for each square foot of #floor area# provided for #lower income housing#;~~

~~(ii) the #floor area# of a #development# or #enlarge-ment# may~~ be ~~further~~ increased by 0.833 square feet for each one square foot of #moderate income floor area# ~~provided for #moderate income housing~~#, or by 0.625 square feet for each one square foot of #middle income floor area# ~~provided for #middle income~~, provided that for each square foot of such #floor area compensation# ~~increase pursuant to this paragraph, (d)(2)(ii)~~, there is one square foot of #floor area compensation# ~~increase~~ pursuant to ~~paragraph (d)(2)(i) of this~~ Section 23-952;

~~(iii)~~(2) H~~h~~owever, the amount of #affordable ~~lower income~~ housing# ~~#moderate income housing# and #middle income housing#~~ required to receive such ~~bonus~~ #floor area compensation# need not exceed the amounts specified in this paragraph (~~d~~a)(2~~)(iii)~~. If #affordable housing# is provided for both #low income and #moderate income ~~housing# and #lower income housing# are provided~~ households#, the amount of # moderate income ~~housing~~ floor area# need not exceed 15 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of ~~#lower~~ #low income ~~housing~~ floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#. If #affordable housing# is provided for both #middle income ~~housing~~ households# and #low~~er~~ income ~~housing# are provided~~ households#, the amount of # middle income ~~housing~~ floor area# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#, provided that the amount of ~~#lower income~~ #low income floor area# is at least 10 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, on the #zoning lot#.

For the purposes of this paragraph (a), inclusive, #low income floor area# may be considered #moderate income floor area# or #middle income floor area#, and #moderate

income floor area# may be considered #middle income floor area#.

~~(3) The #lower income housing# must be provided in accordance with the provisions set forth in Section 23-95 (Lower Income Housing Requirements), except that:~~

~~(i) the provisions of paragraphs (a), (b) and (e)(i) of Section 93-233 shall apply; and~~

~~(ii) #moderate income housing# and #middle income housing# shall be considered #lower income housing# for the purposes of Sections 23-951, 23-952 and 23-953.~~

(b) Within R6 and R8 districts in Waterfront Access Plan BK-1 and R7-3 Districts within Community District 1, Borough of Brooklyn, #affordable housing# may be provided that is restricted to #moderate income floor area#, in accordance with the provisions of Section 62-352.

(c) Within the #Special Hudson Yards District# and the #Special West Chelsea District#, #affordable housing# may be provided that is restricted to #moderate income floor area# or #middle income floor area#, in accordance with the provisions of Sections 93-23 and 98-26, respectively.

(d) Within the #Special West Chelsea District#, conversions of non-#residential buildings#, or portions thereof, to #dwelling units#, that exceed the maximum #floor area ratio# specified in Section 98-22, shall be subject to the provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive, as modified by Section 98-26.

23-954
Additional requirements for compensated developments

(a) Height and setback in #inclusionary housing designated areas#

(1) In #inclusionary housing designated areas#, except within #Special Mixed Use Districts#, the #compensated development# must comply with the height and setback regulations of Sections 23-633 (Street wall location and height and setback regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), as applicable.

(2) In #inclusionary housing designated areas# within #Special Mixed Use Districts#, where the #residence district# designation has a letter suffix, the #compensated development# must comply with the provisions of paragraph (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations). Where the #residence district# designation does not have a letter suffix, the #compensated development# must comply with the height and setback regulations of Section 23-633 regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program.

(b) Compensated Development Building Permits

(1) #HPD# may issue a #permit notice# to the Department of Buildings at any time on or after the #regulatory agreement date#. The Department of Buildings may thereafter issue building permits to a #compensated development# that utilizes #floor area compensation# based on the #affordable housing# described in such #permit notice#.

.

(2) If #HPD# does not receive confirmation that the #regulatory agreement# has been recorded within 45 days after the later of (i) the #regulatory agreement date#, or (ii) the date upon which #HPD# authorizes the recording of the #regulatory agreement#, #HPD# shall suspend or revoke such #permit notice#, notify the

Department of Buildings of such suspension or revocation and not reinstate such #permit notice# or issue any new #permit notice# until #HPD# receives confirmation that the #regulatory agreement# has been recorded. Upon receipt of notice from #HPD# that a #permit notice# has been suspended or revoked, the Department of Buildings shall suspend or revoke each building permit issued pursuant to such #permit notice# which is then in effect for any #compensated development#.

(c) Compensated Development Certificates of Occupancy

(1) The Department of Buildings shall not issue a temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area compensation# until #HPD# has issued a #completion notice# with respect to the #affordable housing# that generates such #floor area compensation#. However, where any #story# of a #compensated development# contains one or more #affordable housing units#, the Department of Buildings may issue any temporary or permanent certificate of occupancy for such #story# if such temporary or permanent certificate of occupancy either includes each #affordable housing unit# located in such #story# or only includes #dwelling units# or #rooming units# that are #affordable housing units#. Nothing in the preceding sentence shall be deemed to prohibit the granting of a temporary or permanent certificate of occupancy for a #super's unit#.

(2) #HPD shall not issue a #completion notice# with respect to any portion of any #generating site# unless:

(i) the Department of Buildings has issued temporary or permanent certificates of occupancy for all #affordable housing# described in such #completion notice# and such certificates of occupancy have not expired, been suspended or been revoked, or

(ii) where a #generating site# contains #affordable housing# that had a valid certificate of occupancy on the #regulatory agreement date# and no new temporary or permanent certificate of occupancy is thereafter required for the creation of such #affordable housing#, #HPD# has determined that all renovation and repair work required by the applicable #regulatory agreement# has been completed and all obligations with respect to the creation of such #affordable housing# have been fulfilled in accordance with the applicable #regulatory agreement#.

23-9~~5~~6
~~Lower Income~~ ~~Housing~~ Requirements for Generating Sites

~~To qualify for the increased #floor area#, #compensated developments# must provide #lower income housing# for the life of the increased #floor area# in the #compensated development# pursuant to one or more of the options listed in Sections 23-951, 23-952 and 23-953, and such #lower income housing# must meet each of the following requirements:~~

~~(a) Standards~~

~~All #lower income housing# shall be in #standard units#. Except in #buildings# in which all #standard units# are occupied by #lower income housing#, the #floor area# devoted to #lower income housing# shall be considered only the #floor area# within the perimeter walls of the #standard units# of the #lower income housing# and a pro-rata share of the common areas of the #building# exclusive of those common areas for which a fee is charged to #lower income households# for its use. In #buildings# in which all of the #standard units# are occupied by #lower income housing#, all of the #residential floor area# shall be considered as devoted to #lower income housing#.~~

~~(b) Tenant selection~~

~~All incoming households of #standard units# in #lower income housing# must be #lower income households#.~~

~~Sublessees of a #lower income household# must also be #lower income households#. The #administering agent# shall verify the income of such sublessee households prior to their occupancy of the #lower income housing#, to assure that such households are #lower income households#.~~

~~On and after the issuance of a certificate of occupancy for #lower income housing#, the #administering agent# shall have a duty:~~

~~(1) to maintain in a habitable condition all #lower income housing#; and~~

~~(2) to rent such housing to #lower income households#.~~

~~This duty to rent shall be satisfied by the #administering agent#, if such agent has in fact rented all such units to #lower income households# or has, in good faith, made a continuing public offer to rent such units at rents no greater than the rents authorized by this program or otherwise at law.~~

~~(c) Rent levels~~

~~All #standard units# in #lower income housing# shall be rented at #fair rents#. The total average annual rent for all #lower income housing# approved pursuant to a #lower income housing plan# shall not exceed an amount equal to the reasonable maintenance, operation, administration and contingency costs for such year as determined by the Commissioner of the Department of Housing Preservation and Development.~~

~~(d) Income verification~~

~~Prior to renting #lower income housing#, the #administering agent# shall verify the income of each household to occupy such housing, to assure that the households are #lower income households#. The #administering agent# shall submit an affidavit to the Commissioner of Housing Preservation and Development upon initial occupancy and annually thereafter attesting that all incoming occupants of #lower income housing# are #lower income households#.~~

~~(e) Lower income housing plan~~

~~A #lower income housing plan# acceptable to the Commissioner of Housing Preservation and Development shall be prepared and followed by the developer.~~

~~Such plan shall include the building plans, indicate the #floor area# devoted to #lower income housing# and shall demonstrate the feasibility of creating and maintaining the specified #lower income housing# required in accordance with the Inclusionary Housing program, including demonstrating that:~~

~~(1) the #lower income housing# will be managed and operated by a responsible #administering agent#;~~

~~(2) there will be sufficient income to provide for adequate maintenance, operation and administration of the #lower income housing#; and~~

~~(3) tenant selection will be on an equitable, non-discriminatory basis and achieves a reasonable range of tenant incomes within the permitted income levels and rent levels established pursuant to this program.~~

~~A restrictive declaration, satisfactory to the Commissioner of Housing Preservation and Development, shall be recorded against the #zoning lot# on which the #lower income~~

~~housing# is constructed and shall set forth the obligations, running with such #zoning lot#, of the owner and all its successors in interest to provide #lower income housing# in accordance with the #lower income housing plan#. The #lower income housing plan# shall be incorporated by reference into the restrictive declaration, and attached as an exhibit thereto.~~

~~No later than the date on which a #lower income housing plan# is first submitted to the Department of Housing Preservation and Development, a copy of the plan shall be submitted to the affected Community Board(s). Such Community Board(s) shall have 45 days to review said plan. No #lower income housing plan# shall be accepted by the Commissioner of Housing Preservation and Development during the Community Board review period.~~

~~A copy of any #lower income housing plan# that is accepted by the Commissioner of Housing Preservation and Development within 24 months of May 21, 1987, shall be furnished by the developer to the Department of City Planning immediately after such acceptance.~~

~~(f) Permits and certificates of occupancy~~

~~No building permit for the #compensated development# shall be issued until the Commissioner of Housing Preservation and Development certifies that an acceptable #lower income housing plan# has been filed and approved.~~

~~No temporary certificate of occupancy shall be issued for any part of the #compensated development# until a temporary certificate of occupancy for each unit of #lower income housing# has been issued or, in #R6, R7 and R8 designated areas#, if the #building# has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the #lower income housing#.~~

~~No permanent certificate of occupancy shall be issued for any part of the #compensated development# until a permanent certificate of occupancy for each unit of the #lower income housing# has been issued or, in #R6, R7 and R8 designated areas#, if the #building# has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the #lower income housing#. Prior to the issuance of any temporary or permanent certificate of occupancy for the #compensated development#, the Commissioner of Housing Preservation and Development shall certify that the #lower income housing# is in compliance with the #lower income housing plan#.~~

~~(g) Insurance~~

~~The #administering agent# of the #lower income housing# shall have said housing insured against any damage or destruction in an amount equal to no less than the replacement value of such housing.~~

~~Any insurance proceeds received as a result of damage or destruction of all or part of such housing shall be used first for restoring such damaged or destroyed housing to #lower income housing#, free of violations under the New York City Building Code, the New York State Multiple Dwelling Law, the New York City Housing Maintenance Code and this Resolution. However, in #R6, R7 and R8 designated areas#, the Commissioner of Housing Preservation and Development may modify this requirement to provide priority for lenders participating in the financing of #lower income housing# that is assisted under City, State or Federal programs.~~

~~(h) Obligations for life of increased #floor area#~~

~~The obligation to provide a specified amount of #lower income housing# shall run with~~

~~the #zoning lot# containing such #lower income housing# for the life of the increased #floor area# of the #compensated development#. In the event any portion of such housing is damaged or destroyed, no #floor area# may be replaced on said #zoning lot# unless such #floor area# contains the specified amount of #lower income housing#.~~

~~(i) Single #building# for #lower income housing#~~

~~Any #building# may contain #lower income housing# that satisfies the requirements of this program for more than one #compensated development#, provided that no #floor area# in the #lower income housing# is counted more than once in determining the amount of increased #floor area# for #compensated developments#.~~

~~(j) Subsequent compensation~~

~~The Commissioner of Housing Preservation and Development may certify that a #lower income housing plan# is in compliance with the requirements of this program and that #lower income housing# is in compliance with said plan prior to the filing of plans for a #compensated development#. #Developments# may subsequently be compensated with additional #floor area# under this program for such #lower income housing#.~~

~~(k) Applicability to rent regulation~~

~~Notwithstanding the provisions herein, no provision shall be applicable to tenants occupying units subject to the rent stabilization law or the rent control law, if such provision would be inconsistent with the rights of such tenants.~~

~~To provide for the effective implementation of the Inclusionary Housing program, guidelines consistent with and in furtherance of the purposes and intent of such program shall be adopted, and may be modified, as follows:~~

~~The Commissioner of Housing Preservation and Development shall develop guidelines for #lower income housing plans#, in consultation with the Board of Estimate, which shall be submitted to the Board of Estimate in time for consideration by the Board at its next regular meeting following the adoption of this Section. Such guidelines shall take effect as submitted, unless modified by the Board at the next meeting following such meeting, in which case the guidelines shall take effect as modified. The guidelines may be modified from time to time by the Commissioner of Housing Preservation and Development, provided, however, that the Commissioner of Housing Preservation and Development shall, within one year of initial adoption of the guidelines, submit the then-existing guidelines to the Board, and the Board may, within thirty days of the first regular meeting following submission, modify such guidelines. If the Board does not modify such guidelines as herein provided, the then-existing guidelines shall continue in effect. Thereafter, the Board may, not more frequently than once a year, request the Commissioner of Housing Preservation and Development to submit the then-existing guidelines to the Board.~~

~~The Board may, within thirty days of the first regular meeting following submission modify such guidelines. If the Board does not modify such guidelines as herein provided, the then-existing guidelines shall continue in effect. Any plan submitted to the Commissioner of Housing Preservation and Development under the then-existing guidelines shall not be affected by any subsequent modification thereto.~~

~~23-951~~
~~On-site new construction option~~

~~To qualify for this option, the designated #lower income housing# shall meet the following requirements.~~

~~(a) The #lower income housing# shall be located in newly constructed #floor area# in the~~

~~#compensated development#. The #lower income housing# shall be maintained and leased to #lower income households# for the life of the increased #floor area#.~~

~~(b) #Dwelling units# designated as #lower income housing# shall be distributed throughout the #development#. No #story# shall contain more than two such units unless at least 80 percent of all #stories# contains two such units. The size of the designated #lower income housing# units shall at least be distributed among the various size units in proportion to the total distribution of unit size within the #building# in the following categories of unit sizes:~~

~~under 600 net square feet~~
~~600 - 749 net square feet~~
~~750 - 949 net square feet~~
~~950 - 1149 net square feet~~
~~1150 or more net square feet~~

~~In #Inclusionary Housing designated areas#, if the #lower income housing# is subject to the requirements of City, State or Federal programs assisting the #lower income housing# that have size and distribution requirements conflicting with the size and distribution requirements of this paragraph, (b), then the size and distribution requirements of this paragraph, (b), may be waived by the Commissioner of Housing Preservation and Development to facilitate the #development# of #lower income housing#.~~

~~23-952~~
~~Substantial rehabilitation and off-site new construction options~~

~~To qualify for one or more of these options, the designated #lower income housing# shall meet the following requirements:~~

~~(a) The #lower income housing# shall be located either:~~

~~(1) within the same Community District as the #compensated development#; or~~

~~(2) within an adjacent Community District and within a one-half mile radius of the #compensated development#, except that #lower income housing# located within a one-half mile radius of a #compensated development# in Community District 1, Borough of Brooklyn, shall be located in an adjacent Community District in the Borough of Brooklyn.~~

~~For the new construction option the #lower income housing# shall be in a new #building#. For the substantial rehabilitation options, the #lower income housing# shall be in an existing #building# in which, prior to the submission of the #lower income housing plan# pursuant to this Section, any #residential# portion not in public ownership had been entirely vacant for not less than three years.~~

~~Furthermore, in # Inclusionary Housing designated areas#, the #administering agent# shall not be required to verify the income of households in tenancy, as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing plan#.~~

~~(b) The #lower income housing# shall be maintained and leased to #lower income households# for the life of the increased #floor area#.~~

~~(c) On-site substantial rehabilitation units shall be those units on the same #zoning lot# as the #compensated development#.~~

~~23-953~~
~~Preservation option~~

~~To qualify for this option, the designated #lower income housing# shall meet the following requirements.~~

~~(a) The #lower income housing# shall be located either:~~

~~(1) within the same Community District as the #compensated development#; or~~

~~(2) within an adjacent Community District and within a one-half mile radius of the #compensated development#, except that #lower income housing# located within a one-half mile radius of a #compensated development# in Community District 1, Borough of Brooklyn, shall be located in an adjacent Community District in the Borough of Brooklyn.~~

~~The #lower income housing# shall be in an existing occupied #residential# or #mixed building#. Only #standard units# occupied by #lower income households# shall be #lower income housing#. For each #standard unit# designated as #lower income housing# the #administering agent# shall verify the income of the household in tenancy.~~

~~Furthermore, in # Inclusionary Housing designated areas#, the #administering agent# shall not be required to verify the income of households in tenancy, as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing plan#.~~

~~(b) Rent charged to #lower income households# shall not be increased to reflect the costs of any renovation made in order to qualify such units under the Inclusionary Housing program, even though such increases may be permitted under other laws regulating maximum rent levels in these units.~~

~~(c) The Commissioner of Housing Preservation and Development may require any improvements to the #building# or to the housing necessary to ensure that, with normal maintenance, the #lower income housing# will continue to provide a decent, safe and sanitary living environment for the life of the increased #floor area# in the #compensated development#.~~

~~(d) The #lower income housing# shall be maintained and leased to #lower income households# for the life of the increased #floor area# in the #compensated development#.~~

~~(e) The developer of a #compensated development# must demonstrate to the satisfaction of the Commissioner of Housing Preservation and Development that, for three years prior to the submission of the #lower income housing plan#, no harassment occurred that resulted in removal of previous tenants of units proposed to become #lower income housing# preserved pursuant to this Section.~~

#Affordable housing# in a #generating site# shall meet each of the requirements set forth in this Section for the entire #regulatory period#.

(a) Location of Generating Site and Compensated Zoning Lot

Where a #generating site# is not located within the #compensated zoning lot# for which it generates #floor area compensation#:

(1) the #generating site# and the #compensated zoning lot# shall be located within the same Community District; or

(2) the #generating site and the #compensated zoning lot# shall be located in adjacent Community Districts and within one-half mile of each other, measured from the perimeter of each #zoning lot#. However, where the #compensated zoning lot# is located in Community District 1, Borough of Brooklyn, such adjacent Community District shall be located in the Borough of Brooklyn; in the #Special Downtown

Jamaica District#, #affordable housing# shall be located in accordance with the provisions of Section 115-211 (Special Inclusionary Housing regulations); and in the #Special Southern Hunters Point District#, #affordable housing# shall be located in accordance with the provisions of Section 125-22 (Newtown Creek Subdistrict).

(b) Distribution of Affordable Housing Units

In #new construction affordable housing# or #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# or #rooming units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#:

(1) the #affordable housing units# shall be distributed on not less than 65 percent of the #residential stories# of such #generating site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#; and

(2) not more than 33 percent of the #dwelling units# and #rooming units# on any #story# of such #generating site# shall be #affordable housing units#, unless not less than 33 percent of the #dwelling units# and #rooming units# on each #residential story# of such #generating site# are #affordable housing units#.

However, #HPD# may waive such distribution requirements for any #new construction affordable housing# that is participating in a federal, state or local program where such #generating site# cannot comply with both the regulations of such federal, state or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# as specified in the guidelines.

(c) Bedroom Mix of Affordable Housing Units

(1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#, either:

(i) the #dwelling units# in the #generating site# that are #affordable housing units# shall contain a bedroom mix at least proportional to the bedroom mix of the #dwelling units# in the #generating site#, other than any #super's unit#, that are not #affordable housing units#; or

(ii) not less than 50 percent of the #dwelling units# in the #generating site# that are #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of the #dwelling units# in the #generating site# that are #affordable housing units# shall contain one or more bedrooms.

However, #HPD# may waive such distribution requirements for any #new construction affordable housing# that either is participating in a federal, state or local program where such #generating site# cannot comply with both the regulations of such federal, state or local program and those of this Section; or is located on an #interior lot# or #through lot# with less than 50 feet of frontage along any #street# may waive these requirements for #substantial rehabilitation affordable housing# as specified in the guidelines.

(2) Where all of the #dwelling units# in a #generating site#, other than any #super's unit#, in #new construction affordable housing# and #substantial rehabilitation affordable housing# are #affordable housing units#, not less than 50 percent of such #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of such #affordable housing units# shall contain one or more bedrooms. However, #HPD# may waive these requirements for any #affordable housing# that is participating in a federal, state or local program where such #generating site# cannot comply with both the regulations of such federal, state or

local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing#, as specified in the #guidelines#.

(3) All of the #supportive housing units# in a #generating site# shall be #affordable housing units# and shall contain such configuration as #HPD# shall require.

(d) Size of Affordable Housing Units

(1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, an #affordable housing unit# shall contain not less than:

(i) 400 square feet of #floor area# within the perimeter walls for a zero bedroom #dwelling unit#; or

(ii) 575 square feet of #floor area# within the perimeter walls for a one bedroom #dwelling unit#; or

(iii) 775 square feet of #floor area# within the perimeter walls for a two bedroom #dwelling unit#; or

(iv) 950 square feet of #floor area# within the perimeter walls for a three bedroom #dwelling unit#.

However, #HPD# may waive such distribution requirements for any #new construction affordable housing# that is participating in a federal, state or local program where such #generating site# cannot comply with both the regulations of such federal, state or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# as specified in the guidelines.

(2) Where all of the #dwelling units# in a #generating site#, other than any #super's unit#, in #new construction# or #substantial rehabilitation affordable housing# are #affordable housing units#, #HPD# may waive such square footage requirements for any #affordable housing unit# that is participating in a federal, state or local program where such #generating site# cannot comply with both the regulations of such federal, state or local program and those of this Section. In addition, #HPD# may waive such square footage requirements for #substantial rehabilitation affordable housing#, as specified in the #guidelines#.

(3) #Supportive housing units# shall comply with the size requirements specified by #HPD#.

(e) Administering Agent

(1) #HPD# shall approve each #administering agent# and may revoke such approval at any time before or during the #regulatory period#.

(2) An #administering agent# shall be a not-for-profit entity and shall not be, or be an affiliate of, an owner or managing agent of the #generating site#, unless #HPD# approves such owner, managing agent or affiliate to serve as the #administering agent# upon a determination that either (i) the #affordable housing# is participating in a federal, state or local program that provides adequate independent means of ensuring compliance with the #regulatory agreement#, or (ii) the owner and any such managing agent or affiliate are not-for-profit entities and there are adequate safeguards to ensure that such entities comply with the #regulatory agreement# .

(3) For a period of time specified in the #guidelines#, the #administering agent# shall maintain all records setting forth the facts that form the basis of any affidavit

submitted to #HPD#. The #administering agent# shall maintain such records, and such other records as #HPD# may require, at the offices of the #administering agent# or at such other location as may be approved by #HPD#. The #administering agent# shall make such records, and all facets of the operations of the #administering agent#, available for inspection and audit by #HPD# upon request.

(f) Regulatory Agreement

(1) The #regulatory agreement# shall require compliance with and shall incorporate by reference the #affordable housing plan# and the applicable provisions of this Zoning Resolution and the #guidelines# and shall contain such additional terms and conditions as #HPD# deems necessary.

(2) The #regulatory agreement# shall require that #HPD# be provided with documentation indicating the amount of #affordable floor area#. For #new construction affordable housing# or #substantial rehabilitation affordable housing#, such documentation shall include, but shall not be limited to, plans meeting the requirements of Section 23-94(c).

(3) The #regulatory agreement# shall be recorded against all tax lots comprising the the portion of the #zoning lot# within which the #generating site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #affordable housing plan# for the entire #regulatory period#.

(4) #Affordable housing# may serve to secure debt with the prior approval of #HPD#. Any lien securing such debt shall be subordinated to the #regulatory agreement#.

(5) The #regulatory agreement# may, but shall not be required to, provide that such #regulatory agreement# may be terminated prior to the issuance of a temporary or permanent certificate of occupancy for any #compensated development# by the Department of Buildings.

(6) Where all of the #dwelling units#, #rooming units# or #supportive housing units# in a #generating site#, other than any #super's unit#, are #affordable housing units#, the #regulatory agreement# shall provide that, following a default and any applicable opportunity to cure, #HPD# may, in addition to any other remedies provided therein or by applicable law,

(i) appoint a receiver to manage such #generating site# or

(ii) take control of the board of directors of any housing development fund company or not-for-profit corporation that owns, controls or operates such #generating site#.

(7) Where applicable in accordance with Section 23-96(g) (Monthly Rent), the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

(g) Housing Standards

Upon the date that #HPD# issues the #completion notice#, the #generating site# shall be entirely free of violations of record issued by any city or state agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and this Zoning Resolution, except as may be otherwise provided in the #guidelines# with respect to non-hazardous violations in occupied #affordable housing units# of #preservation affordable housing# or #substantial rehabilitation affordable housing#.

(h) Insurance

The #affordable housing# in a #generating site# shall at all times be insured against any damage or destruction in an amount not less than the replacement value of such #affordable housing#. Any insurance proceeds resulting from damage or destruction of all or part of the #generating site# containing such #affordable housing# shall be used first to restore any damaged or destroyed #affordable housing#, except that #HPD# may provide priority for lenders participating in the financing of #affordable housing# that is assisted under city, state or federal programs.

(i) Duration of Obligations

The obligation to provide and maintain a specified amount of #affordable housing# on a #generating site# shall run with the #zoning lot# containing such #generating site# for not less than the #regulatory period#. If any portion of such #affordable housing# is damaged or destroyed, no #floor area# shall be #developed#, reconstructed or repaired on such #zoning lot#, and no #development#, #enlargement#, extension or change of #use# shall occur on such #zoning lot#, unless

(1) the amount of such #floor area# devoted to #affordable housing# is not less than the #floor area# of the #affordable housing# that was damaged or destroyed, or

(2) one hundred percent of such #developed#, reconstructed or repaired #floor area# is #affordable housing#.

(j) One Generating Site May Satisfy Requirements for Multiple Compensated Zoning Lots

Any #generating site# may contain #affordable housing# that satisfies the requirements of this Section 23-90 (INCLUSIONARY HOUSING), inclusive, for more than one #compensated development#, provided that no #affordable floor area# shall be counted more than once in determining the amount of #floor area compensation# for such #compensated developments#.

(k) Guidelines

#HPD# shall adopt and may modify #guidelines# for the implementation of the provisions of this Section 23-90 (INCLUSIONARY HOUSING) , inclusive.

23-961
Additional Requirements for Rental Affordable Housing

The following additional requirements shall apply # to rental #affordable housing# on a #generating site# for the entire #regulatory period#:

(a) Tenant Selection

(1) Upon #rent-up# and any subsequent vacancy for the entire #regulatory period#, #affordable housing units# shall only be leased to and occupied by #low income households#, #moderate income households# and #middle income households#, as applicable. No lease or sublease of an #affordable housing unit# shall be executed, and no tenant or subtenant shall commence occupancy of an #affordable housing unit#, without the prior approval of the #administering agent#.

(2) A tenant may, with the prior approval of the #administering agent#, sublet an #affordable housing unit# for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the #monthly rent# that could be

charged to the sublessor in accordance with the #regulatory agreement#.

(3) A #low income household# may rent an #affordable housing unit# that is restricted to occupancy by #moderate income# or #middle income households#, provided that the #administering agent# determines that such #low income household# is able to utilize rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, to afford the applicable #monthly rent#.

(b) Monthly Rent

(1) The #regulatory agreement# shall provide that each #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD# within 60 days following the #rent-up date# and shall thereafter remain subject to #rent stabilization# for the entire #regulatory period# and thereafter until vacancy. However, the #regulatory agreement# may permit an alternative date by which any #affordable housing units# that are vacant on the #rent-up date# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD#.

(i) However, any #affordable housing unit# of #preservation affordable housing# or #substantial rehabilitation affordable housing# that is both occupied by a #grandfathered tenant# and subject to the Emergency Housing Rent Control Law on the #regulatory agreement date# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy following the #regulatory agreement date# and shall thereafter be subject to #rent stabilization# as provided herein.

(ii) The #regulatory agreement# shall provide that upon each annual registration of an #affordable housing unit# with the Division of Housing and Community Renewal, the #legal regulated rent# for such #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at an amount not exceeding the #maximum monthly rent#, except as may be otherwise provided in the #guidelines# with respect to #affordable housing units# receiving project-based rental assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended. However, the #regulatory agreement# shall provide that this requirement shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant# until the first vacancy after the #regulatory agreement date#.

(2) The #regulatory agreement# shall provide that the #monthly rent# charged to the tenant of any #affordable housing unit# at #initial occupancy# and in each subsequent renewal lease shall not exceed the lesser of the #maximum monthly rent# or the #legal regulated rent#, except as may be otherwise provided in the #guidelines# with respect to #affordable housing units# receiving project-based rental assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended. However, the #regulatory agreement# shall provide that these requirements shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant#, until the first vacancy after the #regulatory agreement date#.

(3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that the #monthly rent# registered and charged for each #affordable housing unit# complied with the applicable #monthly rent# requirements at the time of #initial occupancy#.

(4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each lease or sublease of an #affordable housing unit# or renewal

thereof during the preceding year complied with the applicable #monthly rent# requirements at the time of execution of the lease or sublease or renewal thereof.

(5) The #regulatory agreement# shall provide that the lessor of an #affordable housing unit# shall not utilize any exemption or exclusion from any requirement of #rent stabilization# to which such lessor might otherwise be or become entitled with respect to such #affordable housing unit#, 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 (i) the vacancy of a unit where the #legal regulated rent# exceeds a prescribed maximum amount, (ii) the fact that tenant income or the #legal regulated rent# exceeds prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other reason.

(6) The #regulatory agreement# and each lease of an #affordable housing unit# shall contractually require the lessor of each #affordable housing unit# to grant all tenants the same rights that they would be entitled to under #rent stabilization# without regard to whether such #affordable housing unit# is statutorily subject to #rent stabilization#. If any court declares that #rent stabilization# is statutorily inapplicable to an #affordable housing unit#, such contractual rights shall thereafter continue in effect for the remainder of the #regulatory period#.

(7) The #regulatory agreement# shall provide that each #affordable housing unit# that is occupied by a tenant at the end of the #regulatory period# shall thereafter remain subject to #rent stabilization# for not less than the period of time that such tenant continues to occupy such #affordable housing unit#, except that any occupied #affordable housing unit# that is subject to the Emergency Housing Rent Control Law at the end of the #regulatory period# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy.

(c) Income

(1) Each #affordable housing unit# shall be leased to and occupied by #low income households#, #moderate income households# or #middle income households#, as applicable, for the entire #regulatory period#.

(2) The #administering agent# shall verify the #household# income of the proposed tenant prior to leasing any vacant #affordable housing unit# in order to ensure that it is a #low income household#, #moderate income household# or #middle income household#, as applicable.

(3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# occupying an #affordable housing unit# complied with the applicable income eligibility requirements at the time of #initial occupancy#.

(4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# that commenced occupancy of a vacant #affordable housing unit# during the preceding year, and each #household# that subleased an #affordable housing unit# during the preceding year, complied with the applicable income eligibility requirements at the time of #initial occupancy#.

(d) Affordable Housing Plan

(1) An #affordable housing plan# shall designate the initial #administering agent#, include the agreement with the initial #administering agent#, state how #administering agents# may be removed, state how a new #administering agent# may be selected upon the removal or other departure of any #administering agent#, include the building plans, state the number and bedroom mix of the

#affordable housing units# to be #developed#, rehabilitated or preserved, indicate how tenants will be selected at #rent-up# and upon each subsequent vacancy of an #affordable housing unit#, indicate how the #household# income of each prospective tenant will be verified prior to such #household#'s #initial occupancy# of an #affordable housing unit# and include such additional information as #HPD# deems necessary.

(2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #affordable housing# in accordance with this Section 23-90 (INCLUSIONARY HOUSING), inclusive, including that:

(i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;

(ii) #affordable housing units# will be leased to eligible #households# by a responsible #administering agent# at #rent-up# and upon each subsequent vacancy; and

(iii) tenants will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.

(3) A copy of any proposed #affordable housing plan# shall be delivered to the affected Community Board, which may review such proposal and submit comments to #HPD#. #HPD# shall not approve a proposed #affordable housing plan# until the earlier of:

(i) the date that the affected Community Board submits comments regarding such proposal to #HPD# or informs #HPD# that such Community Board has no comments, or

(ii) 45 days from the date that such proposal was submitted to the affected Community Board.

(e) Special requirements for rental #preservation affordable housing#

The following additional requirements shall apply to rental #preservation affordable housing#:

(1) all of the #dwelling units#, #rooming units# and #supportive housing units# in the #generating site#, other than any #super's unit#, shall be #affordable housing units# that are leased to and occupied by #low income households# for the entire #regulatory period#;

(2) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

(3) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;

(4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#;

(5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and

(6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(f) Special requirements for rental #substantial rehabilitation affordable housing#

The following additional requirements shall apply to rental #substantial rehabilitation affordable housing#:

(1) such #affordable housing# shall be created through the rehabilitation of a #generating site# at a cost per completed #affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;

(2) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

(3) on the #regulatory agreement date#, #HPD# shall have determinedthat the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;

(4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#;

(5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and

(6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

23-962
Additional Requirements for Homeownership Affordable Housing

The following additional requirements shall apply to #homeownership affordable housing# on a #generating site# for the entire #regulatory period#:

(a) Homeowner Selection

(1) Upon #sale# #homeownership affordable housing units# shall only be occupied by #eligible buyers# that are #low income households#, #moderate income households# and #middle income households#, as applicable. Upon any subsequent #resale# for the entire #regulatory period#, #homeownership affordable housing units# shall be sold to and occupied by #eligible buyers# at or below the #maximum resale price# on the #sale date#, as applicable. No #homeownership affordable housing unit# shall be sold to or occupied by any #household# or any other person without the prior approval of the #administering agent#.

(2) A #homeowner# may, with the prior approval of the #administering agent#, sublet an #homeownership affordable housing unit# to another #low income household#, #moderate income household#, #middle income household#, or #eligible buyer#, as applicable, for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes paid by the sublessor.

(3) A #homeowner# shall reside in the #homeownership affordable housing unit# except as provided in paragraph (a)(2) of this Section.

(4) The restrictions in this Section 23-962(a) on the ownership of #homeownership affordable housing units# shall not prevent the exercise of a valid lien by a #mortgage# lender, #cooperative corporation#, #condominium association# or any other entity authorized by the #regulatory agreement# to take possession of a #homeownership affordable housing unit# in the event of default by the #homeowner#. However, any #sale# or #resale# by such lien holder shall be to an #eligible buyer#, in accordance with this Section 23-962(a) and the #guidelines#.

(b) Price

(1) The #initial price# or #maximum resale price# of any #homeownership affordable housing unit# shall be set assuming a #mortgage#, as defined in section 23-913 (Definitions Applying to Homeownership Generating Sites).

(2) The #regulatory agreement# shall establish the #initial price# for each #homeownership affordable housing unit#. #HPD# shall set the #initial price# to ensure that the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid directly by the #homeowner# will not exceed 30 percent of the #low income limit#, #moderate income limit# or #middle income limit#, as applicable.

(3) Prior to any #resale# of an #homeownership affordable housing unit#, the #administering agent# shall set the #maximum resale price# for such #homeownership affordable housing unit#.

(4) The #administering agent# shall not approve any #resale# unless the selected #eligible buyer# provides a #down payment# as specified in the #guidelines#.

(5) An #homeownership affordable housing unit#, or any shares in a #cooperative corporation# appurtenant thereto, shall not secure any debt unless such debt is a #mortgage# that has been approved by the #administering agent#.

(c) Income

(1) The #administering agent# shall verify the #household# income of a proposed #homeowner#, in accordance with the #guidelines#, prior to the #sale date# of any #homeownership affordable housing unit# in order to ensure that, upon

#sale#, it is a #low income household#, #moderate income household# or #middle income household#, as applicable, and that upon #resale#, it is an #eligible buyer#.

(2) The #administering agent# shall meet reporting requirements on each #sale and #resale# as set forth in the #guidelines#.

(3) Each year after the #commencement date#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #resale# of an #homeownership affordable housing unit# during the preceding year complied with all applicable requirements on the #resale date#.

(d) Affordable Housing Plan

(1) An #affordable housing plan# shall include the building plans, state the number and bedroom mix of the #homeownership affordable housing units# to be #developed#, rehabilitated or preserved, indicate how #homeowners# will be selected upon each #sale# or #resale# of a #homeownership affordable housing unit#, indicate how the #household# income of #eligible buyers# will be verified prior to such #household's initial occupancy# of a #homeownership affordable housing unit# and include such additional information as #HPD# deems necessary.

(2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #homeownership affordable housing#, including that:

(i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;

(ii) #affordable housing units# will be sold under the supervision of a responsible #administering agent# to #eligible buyers# at each #sale# and #resale#; and

(iii) #homeowners# will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.

(3) The requirements of Section 23-961(d)(3) shall apply.

(e) Housing Standards

The requirements of Section 23-96(g) shall apply. In addition, each #homeowner# shall be obligated to maintain each #homeownership affordable housing unit# in accordance with minimum quality standards set forth in the #guidelines#. Prior to any #resale#, #HPD#, or its designee as specified in the #guidelines#, shall inspect the #affordable housing unit# and shall either require the #homeowner# to remedy any condition that violates such minimum quality standards before the #sale date#, or require the retention of a portion of the #resale# proceeds to pay the cost of remedying such condition.

(f) Special requirements for #homeownership preservation affordable housing#.

The following additional requirements shall apply to #homeownership preservation affordable housing#:

(1) on the #regulatory agreement date#, the #generating site# shall be an existing #residential building#.

(2) on the #regulatory agreement date#, the average of the #legal regulated rents#, as such term is defined in Section 23-912, for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered

tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

(3) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 (Additional Requirements for Rental Affordable Housing) until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;

(4) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;

(5) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and

(6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(g) Special requirements for #homeownership substantial rehabilitation affordable housing#.

The following additional requirements shall apply to #homeownership substantial rehabilitation affordable housing#:

(1) on the #regulatory agreement date#, the #generating site# shall be an existing #building#;

(2) such #affordable housing# shall be created through the rehabilitation of such existing #building# at a cost per completed #homeownership affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;

(3) on the #regulatory agreement date#, the average of the #legal regulated rents#, as such term is defined in Section 23-912, for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

(4) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 (Additional Requirements for Rental Affordable Housing) until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;

(5) on the #regulatory agreement date#, #HPD# shall have determined that the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;

(6) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is

likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and

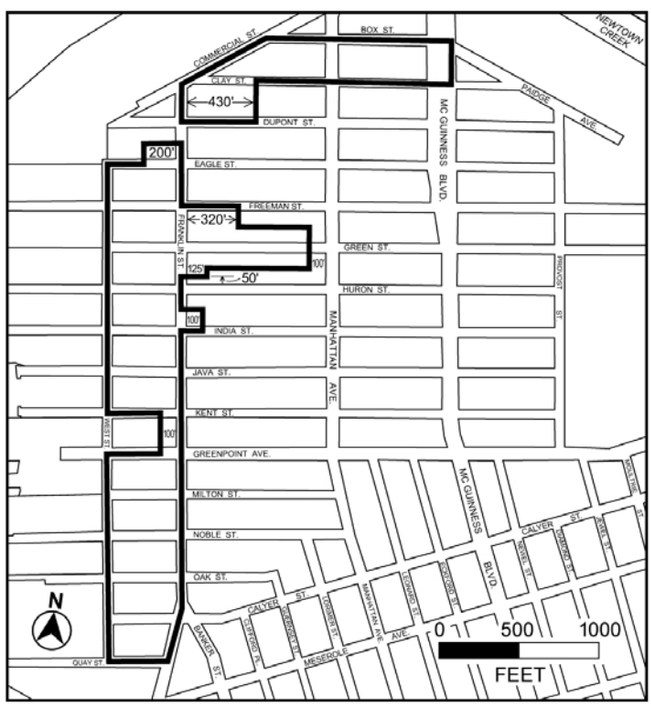
(7) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

* * *

APPENDIX A
INCLUSIONARY HOUSING DESIGNATED AREAS

The boundaries of #Inclusionary Housing designated areas# are shown on the maps listed in this Appendix A. The #residence districts# listed for such areas shall include #commercial districts# where #residential buildings# or the #residential# portion of #mixed buildings# are governed by #bulk# regulations of such #residence districts#.

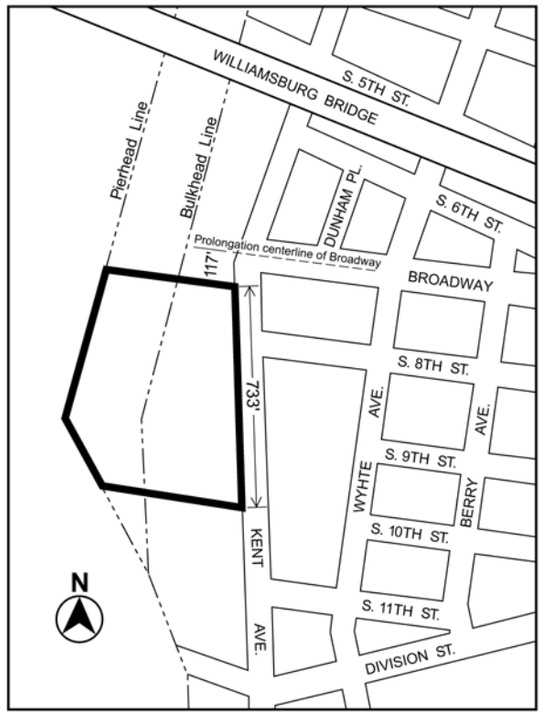
(a) In Community District 1, in the Borough of Brooklyn, Waterfront Access Plan BK-1, as set forth in Section 62-352, and the R6, R6A, R6B and R7A Districts within the areas shown on the following Maps 1 and 2:



Map 1
Portion of Community District 1, Brooklyn

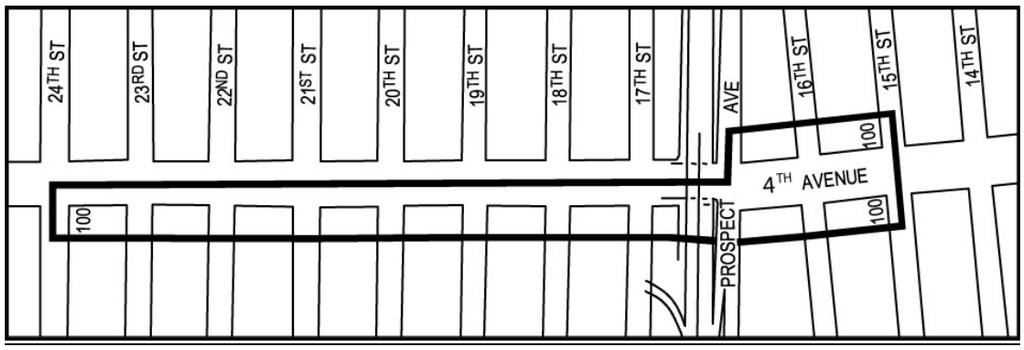
Map 2
Portion of Community District 1, Brooklyn

(b) In Community District 1, in the Borough of Brooklyn, the R7-3 Districts within the area shown on the following Map 3:



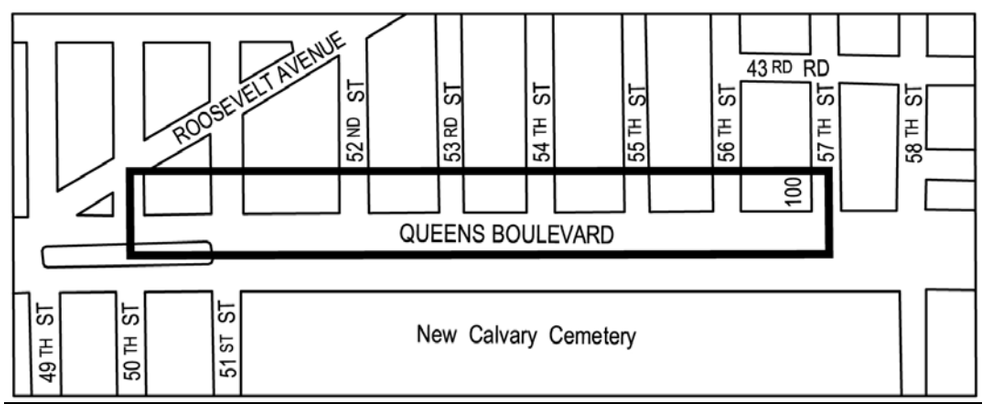
Map 3
Portion of Community District 1, Brooklyn

(c) In Community District 7, in the Borough of Brooklyn, the R8A District within the area shown on the following Map 4:

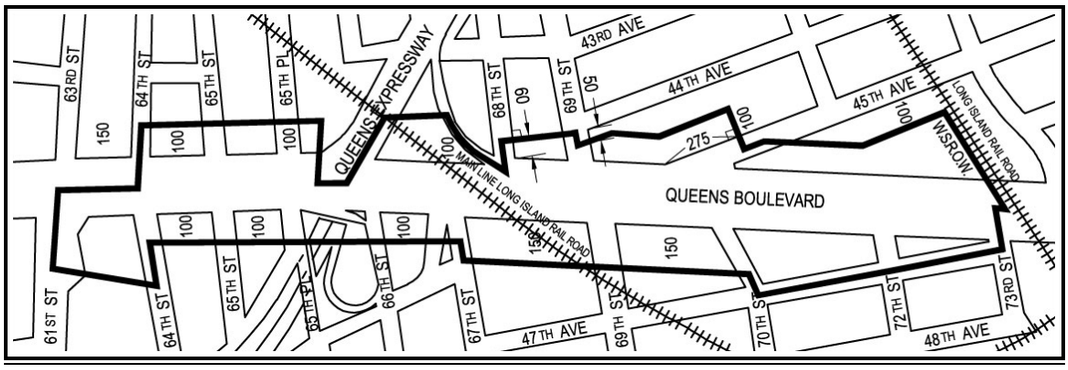


Map 4
Portion of Community District 7, Brooklyn

(d) In Community District 2, in the Borough of Queens, the R7X Districts within the areas shown on the following Maps 5 and 6:

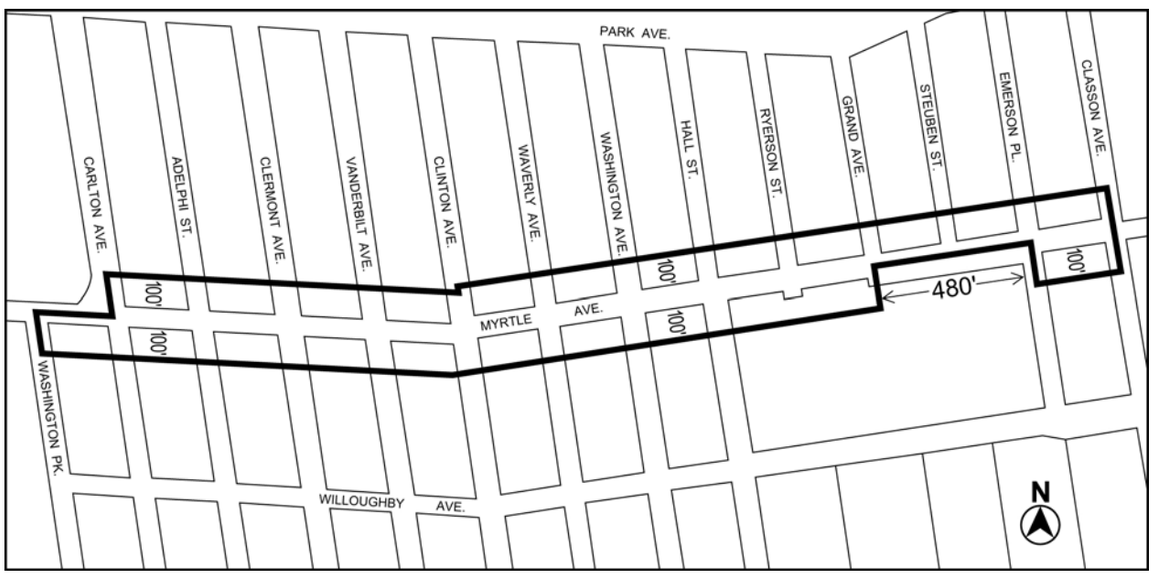


Map 5
Portion of Community District 2, Queens

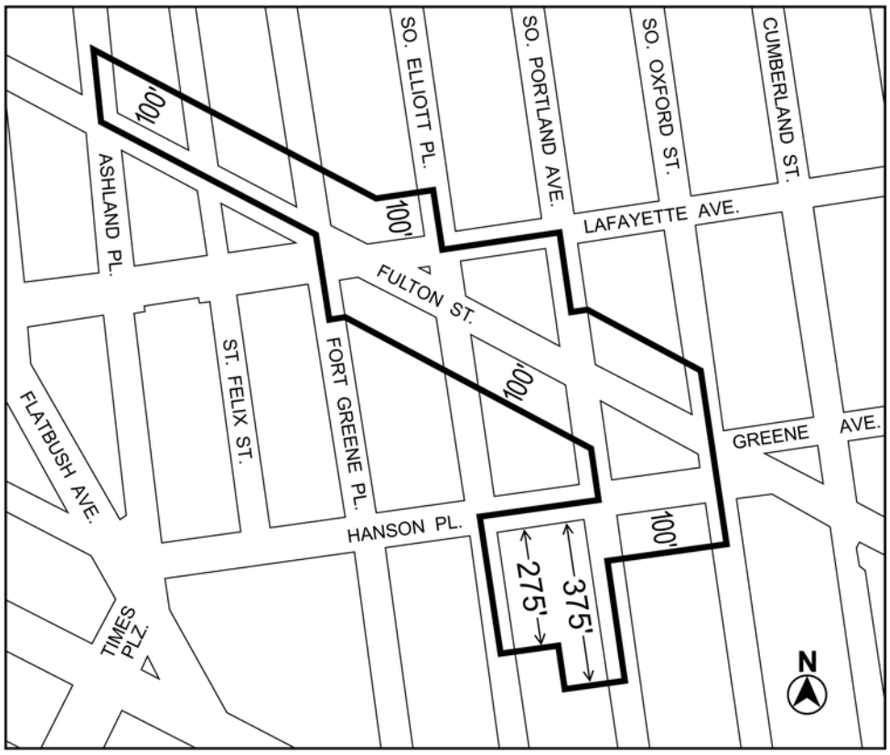


Map 6
Portion of Community District 2, Queens

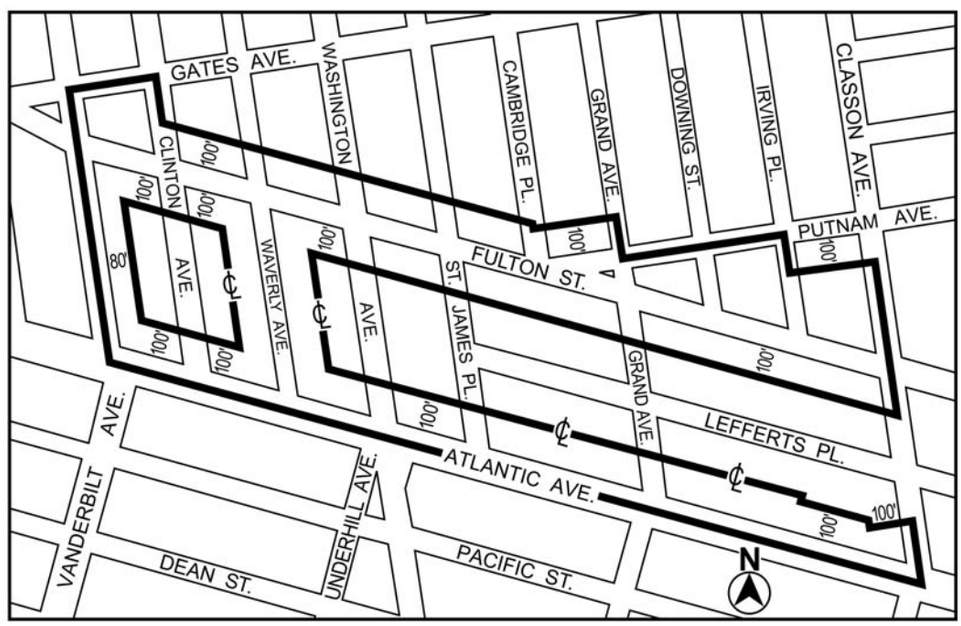
(e) In Community District 2, in the Borough of Brooklyn, the R7A Districts within the areas shown on the following Maps 7, 8 and 9:



Map 7
Portion of Community District 2, Brooklyn

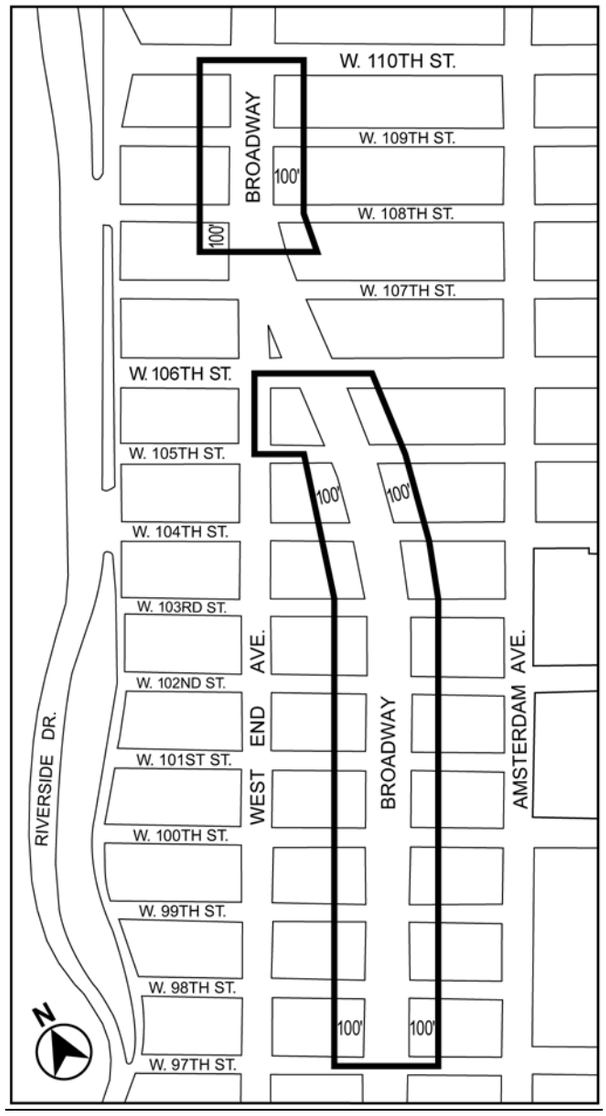


Map 8
Portion of Community District 2, Brooklyn



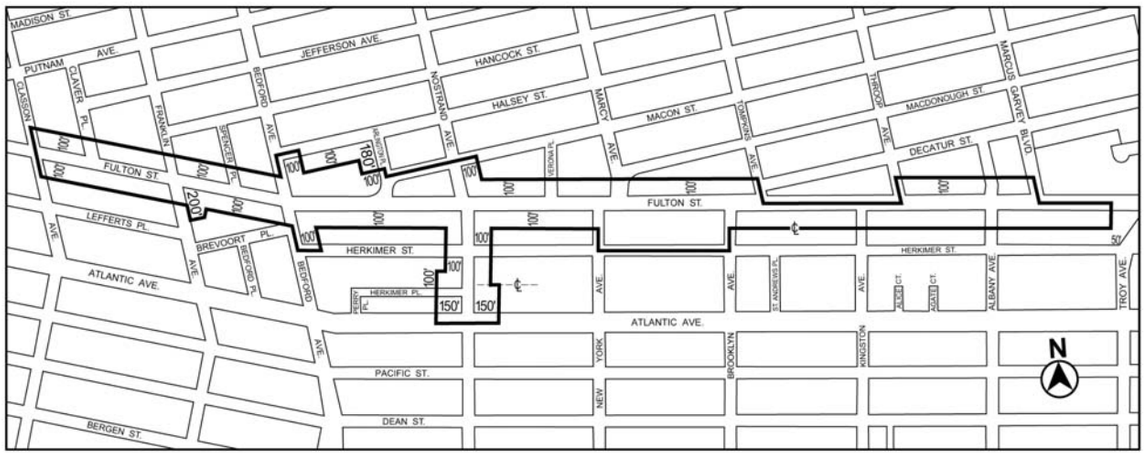
Map 9
Portion of Community District 2, Brooklyn

(f) In Community District 7, in the Borough of Manhattan, the R9A Districts within the areas shown on the following Map 10:

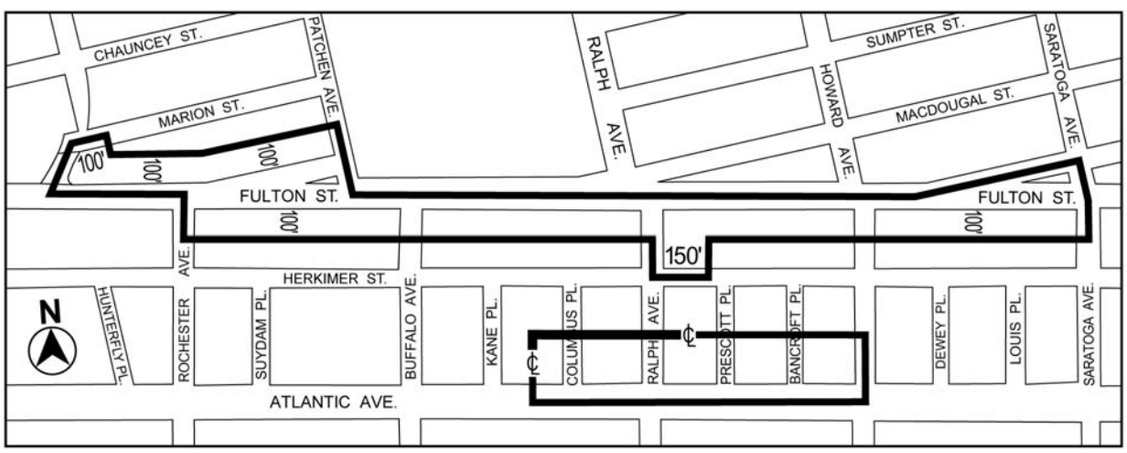


Map 10
Portion of Community District 7, Manhattan

(g) In Community District 3, in the Borough of Brooklyn, the R7D Districts within the areas shown on the following Maps 11 and 12:

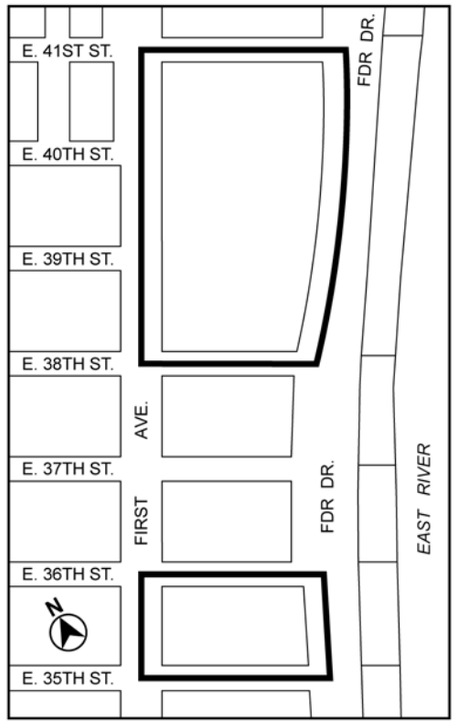


MAP 11
Portion of Community District 3, Brooklyn



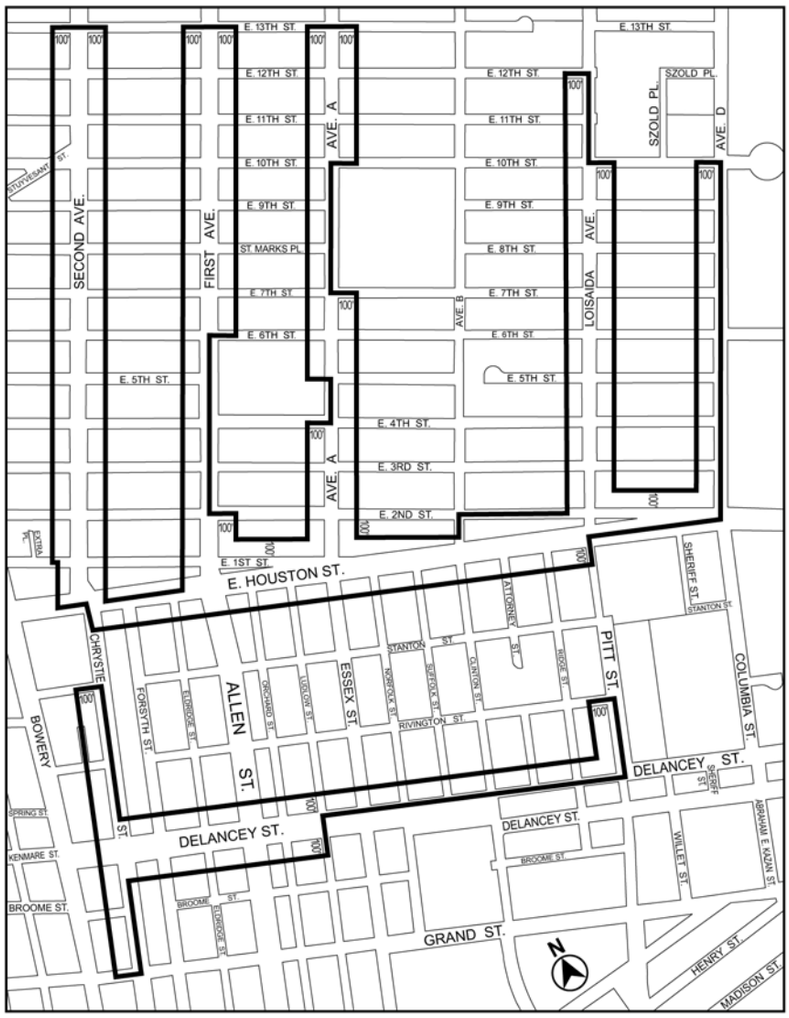
MAP 12
Portion of Community District 3, Brooklyn

(h) In Community District 6, in the Borough of Manhattan, the R10 Districts within the areas shown on the following Map 13:



MAP 13
Portion of Community District 6, Manhattan

(i) In Community District 3, in the Borough of Manhattan, the R7A, R8A and R9A Districts within the areas shown on the following Map 14:



Map 14
Portion of Community District 3, Manhattan

In addition, the following special purpose districts contain #Inclusionary Housing designated areas#, as set forth within the special purpose district:

(1) Special Hudson Yards District – see Section 93-23 (Modifications of Inclusionary Housing Program)
(2) Special West Chelsea District – see Section 98-26 (Modifications of Inclusionary Housing Program)
(3) Special Downtown Jamaica District – see Section 115-211 (Special Inclusionary Housing Regulations)
(4) Special 125th Street District – see Section 97-421 (Inclusionary Housing)
(5) Special Long Island City Mixed Use District – see Section 117-631 (Floor area ratio and lot coverage modifications)
(6) Special Garment Center District – see Section 93-23 (Modifications of Inclusionary Housing Program)
(7) Special Southern Hunters Point District – see Section 125-22 (Newtown Creek Subdistrict)

* * *

24-161
Maximum floor area ratio for zoning lots containing community facility and residential uses

R1 R2 R3-1 R3A R3X R4-1 R4A R4B R5D R6A R6B R7-2 R7A R7B R7D R7X R8 R9 R10

In the districts indicated, for #zoning lots# containing #community facility# and #residential uses#, the maximum #floor area ratio# permitted for a #community facility use# shall be as set forth in Section 24-11, inclusive, and the maximum #floor area ratio# permitted for a #residential use# shall be as set forth in Article II, Chapter 3, provided the total of all such #floor area ratios# does not exceed the greatest #floor area ratio# permitted for any such #use# on the #zoning lot#.

In ~~the~~ #Inclusionary Housing designated areas# ~~set forth in Section 23-922 (Inclusionary Housing designated areas)~~, except within Waterfront Access Plan BK~~k~~-1~~,~~ and in Community District 1, Brooklyn, in R6 Districts without a letter suffix, the maximum #floor area ratio# permitted for #zoning lots# containing #community facility# and #residential uses# shall be the base #floor area ratio# set forth in Section 23-95~~4~~2 for the applicable district. Such base #floor area ratio# may be increased to the maximum #floor area ratio# set forth in such Section only through the provision of #affordable housing# pursuant to Section 23-90 (INCLUSIONARY HOUSING), inclusive.

* * *

35-31
Maximum Floor Area Ratio for Mixed Buildings

C1 C2 C3 C4 C5 C6

In all districts, except as set forth in Section 35-311, the provisions of this Section shall apply to any #zoning lot# containing a #mixed building#.

The maximum #floor area ratio# permitted for a #commercial# or #community facility use# shall be as set forth in Article III, Chapter 3, and the maximum #floor area ratio# permitted for a #residential use# shall be as set forth in Article II, Chapter 3, provided the total of all such #floor area ratios# does not exceed the greatest #floor area ratio# permitted for any such #use# on the #zoning lot#. However, in C4-7 Districts within Community District 7 in the Borough of Manhattan, such maximum #residential floor area ratio# may be increased pursuant to the provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive.

In ~~the~~ #Inclusionary Housing designated areas# ~~set forth in Section 23-922 (Inclusionary Housing designated areas)~~, except within Waterfront Access Plan BK-1~~,~~ and in Community District 1, Brooklyn, in R6 Districts without a letter suffix, the maximum #floor area ratio# permitted for #zoning lots# containing #residential# and #commercial# or #community facility uses# shall be the base #floor area ratio# set forth in Section 23-95~~4~~2 for the applicable district. Such base #floor area ratio# may be increased to the maximum #floor area ratio# set forth in such Section only through the provision of #~~lower income~~ affordable housing# pursuant to Section 23-90 (INCLUSIONARY HOUSING), inclusive.

A non-#residential use# occupying a portion of a #building# that was in existence on December 15, 1961, may be changed to a #residential use# and the regulations on maximum #floor area ratio# shall not apply to such change of #use#.

* * *

ARTICLE VI
SPECIAL REGULATIONS APPLICABLE TO CERTAIN AREAS

* * *

Chapter 2
Special Regulations Applying in the Waterfront Area

* * *

62-35
Special Bulk Regulations in Certain Areas Within Community District 1, Brooklyn

* * *

62-352
Inclusionary Housing

The provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive, shall apply in R7-3 Districts in Community District 1, Borough of Brooklyn, and in R6, ~~R7D~~ and R8 Districts within Waterfront Access Plan BK-1, as modified in this Section.

(a) Definitions

For the purposes of this Section, matter in italics is defined in Section~~s~~ 12-10~~,~~ or in Section 23-90 (INCLUSIONARY HOUSING), inclusive ~~or in this Section, as modified~~.

~~Fair rent~~

~~At initial occupancy of #lower income housing# that is occupied by a #moderate income household# as defined in this Section, "fair rent" shall include an annual rent for each such housing unit equal to not more than 30 percent of the annual income of the tenant of such housing (the "30 Percent Standard").~~

~~Upon renewal of a lease for such an existing tenant in #lower income housing#, #fair rent# (the "Rent Stabilization Standard") is not more than the then-current #fair rent# for such housing plus a percentage increase equal to the percentage increase for a renewal lease of the same term permitted by the Rent Guidelines Board, or its successor, for units subject to the rent stabilization law.~~

~~After initial occupancy, upon rental of #lower income housing# to a new tenant, #fair rent# is not more than the higher of:~~

~~(1) the then-currently applicable "30 Percent Standard"; or~~

~~(2) the Rent Stabilization Standard.~~

~~In order for rent to be #fair rent#, the following must also apply:~~

~~There shall be no additional charge to the tenant for the provision of heat and electric service, except that the Commissioner of Housing Preservation and Development may approve a #lower income housing plan# making a #lower income# or #moderate income household# responsible for the payment of utilities as long as the sum of the following do not exceed 30 percent of said #lower income# or #moderate income household's# income:~~

~~(i) the initial #fair rent#; and~~

~~(ii) the monthly costs of a reasonable compensation for these utilities, by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.~~

~~However, the Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of City, State or Federal programs assisting #lower income housing# will be considered #fair rent#, provided that such rents do not exceed~~

~~30 percent of a #moderate income household's# income and provided further that upon expiration or termination of the requirements of the City, State or Federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable 30 Percent Standard or the Rent Stabilization Standard.~~

~~Lower income housing~~

~~For the purposes of this Section, "lower income housing" shall include #standard units# occupied, or to be occupied, by #lower income# or #moderate income households#.~~

~~Moderate income household~~

~~For the purposes of this Section, a "moderate income household" is a #family# having an income equal to or less than the following proportion of the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U. S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments: 125/80~~

(b) #Floor area compensation# ~~increase~~

(1) For #zoning lots# located in R8 Districts, or located partially in R8 Districts and partially in R6 Districts, the maximum permitted #floor area ratio# on such #zoning lots# may be increased in R6 Districts from 2.43 to 2.75, and in R8 Districts from 4.88 to 6.5; and for #zoning lots# located in R7-3 Districts, the maximum permitted #floor area ratio# on such #zoning lots# may be increased from 3.75 to 5.0, provided that:

(i) the amount of #low income floor area# is equal to at least 20 percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #lower income households#~~; or

(ii) the amount of #low income floor area# is equal to at least 10 percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #lower income households#,~~ and the #moderate income floor area# is equal to at least 15 percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #moderate income households#~~.

(2) For #zoning lots# located entirely within R6 Districts, the maximum permitted #floor area ratio# may be increased from 2.43 to 2.75, provided that:

(i) the amount of #low income floor area# is equal to at least 7.5 percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #lower income households#~~; or

(ii) the amount of #low income floor area# is equal to at least five percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #lower income households#,~~ and the amount of #moderate income floor area# is equal at least five percent of the total ~~#residential~~ floor area#, exclusive of ground-floor non-#residential floor area#, on the #zoning lot# ~~is occupied by #moderate income households#~~.

~~Where #lower# or moderate #income housing# is provided on a #zoning lot# other than the #zoning lot# occupied by the #compensated development#, the percentage of #residential floor area# required to be occupied by such households, pursuant to this~~

~~Section, shall be determined as a percentage of the #residential floor area# on the #zoning lot# of such #compensated development#, inclusive of #floor area# bonused pursuant to this Section.~~

~~For the purposes of determining the amount of #lower income housing# required to increase the maximum permitted #floor area# pursuant to this paragraph, (b), community facility #floor area# used as a philanthropic or not-for-profit institution with sleeping accommodations shall be considered #residential floor area#.~~
For the purposes of this paragraph (b), inclusive, #low income floor area# may be considered #moderate income floor area#, and #moderate income floor area# may be considered #middle income floor area#.

Any #zoning lot# located entirely within an R6 District that, in conjunction with a #zoning lot# located partially or entirely within an R8 District, utilizes a distribution of #floor area#, #lot coverage# or #residential# density without regard to #zoning lot lines# or district boundaries pursuant to Section 62-353 (Special floor area, lot coverage and residential density distribution regulations), shall comply with the provisions of paragraph (b)(1) of this Section.

(c) ~~#Lower Income Housing# Requirements~~

~~#Developments# that increase #floor area# in accordance with the provisions of this Section shall comply with the #lower income housing# requirements of Section 23-95, except as modified in this paragraph, (c).~~

~~(1) The provisions of Section 23-95, paragraph (b), shall apply, except that in addition, incoming households of #standard units# in #lower income housing# may be #moderate income households#, and sublessees of a #moderate income household# may also be a #moderate income household#.~~

~~Furthermore, on and after the issuance of a certificate of occupancy for #lower income housing#, the #administering agent# shall have a duty to rent such housing to lower or #moderate income households#, as provided in this Section and in the approved #lower income housing plan#.~~

~~This duty to rent shall be satisfied by the #administering agent#, if such agent has in fact rented all such units to #lower# or #moderate income households#, as provided in this Section or has, in good faith, made a continuing public offer to rent such units at rents no greater than the rents authorized by this program or otherwise at law.~~

~~(2) The provisions of Section 23-95, paragraph (d), shall apply, except that prior to renting #lower income housing#, the #administering agent# shall verify the income of each household to occupy such housing, to assure that the households are #lower# or #moderate income households# as provided by this Section. The #administering agent# shall submit an affidavit to the Commissioner of Housing Preservation and Development upon initial occupancy and annually thereafter attesting that all incoming occupants of #lower income housing# are lower or #moderate income households# as required by the provisions of this Section and in the approved #lower income housing# plan.~~

~~(3) The provisions of Sections 23-951, 23-952 and 23-953 shall apply, except that with respect to Sections 23-951, paragraph (a), 23-952, paragraph (b) and 23-953, paragraph (a), #lower income housing# shall be maintained and leased to #lower# or #moderate income households#, as provided in this Section, for the life of the increased #floor area#, and in accordance with the approved #lower income housing plan#. Furthermore, Section 23-953, paragraph (a), shall be modified to provide that the #administering agent# shall not be required to verify the income of households in tenancy as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing# plan.~~

~~(d)~~ Permits and certificate of occupancy

The requirements of paragraphs ~~(f)~~ (b) and (c) of Section 23-954 shall ~~not apply. In lieu thereof, the provisions of this paragraph (d), shall apply~~ be modified as follows:.

No building permit for any portion of the #compensated development# that utilizes #floor area compensation# ~~bonused~~ pursuant to paragraph (b) of this Section, or is located on any #story# that utilizes the increased height for #developments# that provide Inclusionary Housing as set forth in paragraph (b)(2) of Section 62-354 (Special height and setback regulations) shall be issued until ~~the~~ #HPD ~~Commissioner#~~ ~~of Housing Preservation and Development~~ ~~certifies that~~ ~~an acceptable #lower income housing plan# has been filed and approved~~ has issued a #permit notice# with respect to the #affordable housing# that generates such #floor area compensation#.

No temporary or permanent certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area compensation# ~~bonused~~ pursuant to paragraph (b) of this Section, or is located on any #story# that utilizes the increased height for #developments# that provide Inclusionary Housing as set forth in paragraph (b)(2) of Section 62-354, until ~~a temporary certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing planregulatory agreement# accepted by the Commissioner of Housing Preservation and Development has been issued or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the~~ #HPD ~~Commissioner#~~ has ~~certified to the Department of Buildings that the applicant has fulfilled its obligations~~ has issued a #completion notice# with respect to the ~~#lower income~~ affordable housing#. ~~No permanent certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to paragraph (b) of this Section, or is located on any #story# which utilizes the increased height for #developments# that provide Inclusionary Housing as set forth in paragraph (b)(2) of Section 62-354, until a permanent certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the #Commissioner# has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the #lower income housing#.~~

~~Prior to the issuance of any temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to paragraph (b) of this Section, or is located on any #story# that utilizes the increased height for #developments# that provide Inclusionary Housing as set forth in paragraph (b)(2) of Section 62-354, the #Commissioner# of Housing Preservation and Development shall certify that the #lower income housing# is in compliance with the #lower income housing plan#.~~

* * *

ARTICLE IX
SPECIAL PURPOSE DISTRICTS

* * *

Chapter 3
Special Hudson Yards District

* * *

93-23
Modifications of Inclusionary Housing Program

~~The provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive, shall be applicable within~~ Subdistrict C (34th Street Corridor) and Subareas D1 and D2 of Subdistrict D (Hell's Kitchen) of the #Special Hudson Yards District# and Area P2 of the #Special Garment Center District#, ~~except as modified in this Section. However, the modifications set forth in this Section shall not be applicable in the area bounded by West 35th Street, Eighth Avenue, West 33rd Street, and a line 100 feet east of and parallel to Ninth Avenue , where the underlying provisions of Section 23-90, (INCLUSIONARY HOUSING), inclusive, shall apply~~ shall be #Inclusionary Housing designated areas# pursuant to Section 12-10 (DEFINITIONS) for the purpose of making the Inclusionary Housing Program regulations of Section 23-90 (INCLUSIONARY HOUSING), inclusive, applicable as modified within the Special Districts.

93-231
Definitions

For the purposes of this Chapter, matter in italics is defined in Sections 12-10~~,~~ or in Section 23-90 (INCLUSIONARY HOUSING), inclusive. ~~the following definitions in Section 23-93 shall be modified:~~

~~Administering agent~~

~~The "administering agent" is the entity or entities identified in the #lower income housing plan# as responsible for ensuring compliance with such plan.~~

~~The #administering agent# shall be a not-for-profit organization, unless the Commissioner of Housing Preservation and Development finds that a good faith effort by the developer of the #compensated development# to secure a qualified not-for-profit organization as the #administering agent# was unsuccessful. However, the Commissioner may approve an entity that is responsible for compliance monitoring pursuant to City, State or Federal funding sources, to serve as the #administering agent# during such compliance period.~~

~~If an entity other than a not-for-profit organization is proposed to serve as the #administering agent#, and the affected Community Board objects during its review period to the approval of the proposed entity, the Commissioner shall respond in writing to the Community Board's objections prior to approving the proposed entity to serve as #administering agent#.~~

~~Fair rent~~

~~"Fair rent" shall be as defined in Section 23-93 with respect to #standard units# occupied by #lower income households#, except that the Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of City, State or Federal programs assisting #lower income housing# will be considered "fair rent," provided that such rents do not exceed 30 percent of a #lower income household#'s income, and provided further that upon expiration or termination of the requirements of the city, state or federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable Section 8 Standard or the Rent Stabilization Standard.~~

~~The following definition of "fair rent" shall apply to #moderate income households# and #middle income households#. At initial occupancy of #lower income housing# that is occupied by a #moderate income household# or a #middle income household# as defined in this Section, #fair rent# shall include an annual rent for each such housing unit equal to not more than 30 percent of the annual income of the tenant of such housing (the "30 Percent Standard").~~

~~Upon renewal of a lease for such an existing tenant in #lower income housing#, #fair rent# (the "Rent Stabilization Standard") is not more than the then-current #fair rent# for such housing plus a percentage increase equal to the percentage increase for a renewal lease of the same term permitted by the Rent Guidelines Board for units subject to the rent stabilization law.~~

~~After initial occupancy, upon rental of #lower income housing# to a new tenant, #fair rent# is not~~

~~more than the higher of:~~

~~(a) the then-currently applicable "30 Percent Standard"; or~~

~~(b) the Rent Stabilization Standard.~~

~~In order for rent to be #fair rent#, the following must also apply:~~

> ~~There shall be no additional charge to the tenant for the provision of heat and electric service, except that the Commissioner of Housing Preservation and Development may approve a #lower income housing plan# making a #lower income#, #moderate income# or #middle income household# responsible for the payment of utilities as long as the sum of the following does not exceed 30 percent of said #lower income#, #moderate income# or #middle income household's# income:~~
>
> ~~(1) the initial #fair rent#; and~~
>
> ~~(2) the monthly costs of a reasonable compensation for these utilities, by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.~~
>
> ~~The Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of City, State or Federal programs assisting #lower income housing# will be considered #fair rent#, provided that such rents do not exceed 30 percent of a #moderate income# or #middle income household#'s income, as applicable, and provided further that upon expiration or termination of the requirements of the City, State or Federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable 30 Percent Standard or the Rent Stabilization Standard.~~

~~At initial occupancy of any #lower income housing# occupied by a #moderate income# or #middle income household#, a portion of the #fair rents# may be for the payment of the principal or interest on debt, and such housing may secure debt, provided that, as of the date of the approval of the #lower income housing plan#, the Commissioner of Housing Preservation and Development finds that the total annual rent, when such interest and principal payments are deducted, is in compliance with the requirements of paragraph (c) of Section 23-95 (Lower Income Housing Requirements), and provided that the lender agrees to enter into a written agreement which subordinates such debt to the provisions of the #lower income housing plan#.~~

~~Lower income household~~

~~#Lower income households# shall also include all existing households in tenancy, provided such households occupy units that are within a #building# in which rents for all occupied units are regulated by City or State law, and the aggregate maximum permitted annual rent roll for such occupied units, divided by the number of occupied units, is less than 30 percent of the applicable income limit for a #lower income household# as provided in this Section. In determining the applicable income limit for such #lower income households#, the Commissioner of Housing Preservation and Development may make adjustments, consistent with the U.S. Department of Housing and Urban Development regulations, for the number of persons residing in each unit.~~

~~Lower income housing~~

~~For the purposes of Section 93-23 (Modifications of Inclusionary Housing Program), inclusive, "lower income housing", as defined in Section 23-93, shall include #standard units# assisted under City, State or federal programs. #Lower income housing# shall also include #standard units# occupied or to be occupied by #lower income households#, as defined in Section 23-93, and #moderate income# or #middle income households#, as defined in this Section.~~

~~Moderate income household~~

~~For the purposes of Section 93-23, inclusive, a "moderate income household" is a #family# having an income equal to or less than the following proportion of the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U.S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments: 125/80.~~

~~Middle income household~~

~~For the purposes of Section 93-23, inclusive, a "middle income household" is a #family# having an income equal to or less than the following proportion of the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U.S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments: 175/80.~~

93-232
Floor area increase

The provisions of Section 23-94~~5~~52 (Floor Area Compensation in Inclusionary Housing designated areas) shall not apply. In lieu thereof, the #floor area# compensation provisions of this Section shall apply. In accordance with the provisions set forth in Section 93-22 (Floor Area Regulations in Subdistricts B, C, D and E) or 121-31 (Maximum Permitted Floor Area), the maximum permitted #residential floor area ratio# for #developments# or #enlargements# that provide #affordable housing# pursuant to the Inclusionary Housing program may be increased, as follows:

(a) The permitted #floor area ratio# may be increased from 6.5, or as otherwise specified in Section 93-22, to a maximum of 9.0, provided that:

(1) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#~~, inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #lower income households#~~; or

(2) the amount of #low income floor area# is equal to at least five percent of the total #residential floor area# on the #zoning lot#, ~~inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #lower income households#,~~ and the amount of #moderate income floor area# is equal to at least 7.5 percent of the total #residential floor area# on the #zoning lot# ~~inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #moderate income households#~~; or

(3) the amount of #low income floor area# is equal to at least five percent of the total #residential floor area# on the #zoning lot#, ~~inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #lower income households#~~, and the amount of #middle income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#~~, inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #middle income households#~~.

(b) The permitted #floor area ratio# may be increased from 9.0 to a maximum of 12.0, provided that:

(1) the amount of #low income floor area# is equal to at least 20 percent of the total #residential floor area# on the #zoning lot#~~, inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #lower income households#~~; or

(2) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#, ~~inclusive of #floor area# bonused~~

~~pursuant to this Section, shall be occupied by #lower income households#~~, and the amount of #moderate income floor area# is equal to at least 15 percent of the total #residential floor area# on the #zoning lot#~~, inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #moderate income households#~~; or

(3) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#, ~~inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #lower income households#,~~ and the amount of #middle income floor area# is equal toat least 20 percent of the total #residential floor area# on the #zoning lot#~~, inclusive of #floor area# bonused pursuant to this Section, shall be occupied by #middle income households#~~.

For the purposes of this Section 93-232, inclusive, #low income floor area# may be considered #moderate income floor area# or #middle income floor area#, and #moderate income floor area# may be considered #middle income floor area#.
~~Where #lower#, #moderate# or #middle income housing# is provided on a #zoning lot# other than the #zoning lot# occupied by the compensated #development#, the percentage of #residential floor area# required to be occupied by such households pursuant to this Section shall be determined as a percentage of the #residential floor area# on the #zoning lot# of such compensated #development#, inclusive of #floor area# bonused pursuant to this Section~~.

~~**Lower income housing requirements**~~

~~#Developments# that increase #floor area# in accordance with the provisions of this Section shall comply with the lower income housing requirements of Section 23-95, except as modified in this Section.~~

~~(a) The provisions of paragraph (b) (Tenant selection) of Section 23-95 shall apply, except that, in addition, incoming households of #standard units# in #lower income housing# may be #moderate# and #middle income households#, and sublessees of a #moderate# or #middle income household# may also be a #moderate# or #middle income household#. Furthermore, on and after the issuance of a certificate of occupancy for #lower income housing#, the #administering agent# shall have a duty to rent such housing to #lower#, #moderate# or #middle income households#, as provided in this Section and in the approved #lower income housing plan#.~~

~~This duty to rent shall be satisfied by the #administering agent# if such agent has in fact rented all such units to #lower#, #moderate# or #middle income households#, as provided in this Section and in the approved #lower income housing plan#, or has, in good faith, made a continuing public offer to rent such units at rents no greater than the rents authorized by this program or otherwise at law.~~

~~(b) The provisions of paragraph (d) (Income verification) of Section 23-95 shall apply, except that prior to renting #lower income housing#, the #administering agent# shall verify the income of each household to occupy such housing to assure that the households are #lower#, #moderate# or #middle income households# as provided by this Section and in the approved #lower income housing plan#. The #administering agent# shall submit an affidavit to the Commissioner of Housing Preservation and Development upon initial occupancy and annually thereafter attesting that all incoming occupants of #lower income housing# are #lower#, #moderate# or #middle income households# as required by the provisions of this Section and in the approved #lower income housing plan#.~~

~~(c) The provisions of paragraph (g) (Insurance) of Section 23-95 may be modified by the Commissioner of Housing Preservation and Development to provide priority for lenders participating in the financing of #lower income housing# that is assisted under City, State or Federal programs.~~

~~(d) Permits and certificate of occupancy~~

~~The requirements of paragraph (f) of Section 23-95 shall not apply. In lieu thereof, the provisions of this paragraph, (d), shall apply.~~

~~No building permit for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 (Floor area increase) shall be issued until the Commissioner of Housing Preservation and Development certifies that an acceptable #lower income housing plan# has been filed and approved.~~

~~No temporary certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 until a temporary certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued, or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the #lower income housing#. No permanent certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 until a permanent certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the #lower income housing#.~~

~~Prior to the issuance of any temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 the Commissioner of Housing Preservation and Development shall certify that the #lower income housing# is in compliance with the #lower income housing plan#.~~

~~(e) The provisions of Sections 23-951 (On-site new construction option), 23-952 (Substantial rehabilitation and off-site new construction option) and 23-953 (Preservation option) shall apply, except as follows:~~

~~(i)with respect to Sections 23-951, paragraph (a), 23-952, paragraph (b), and 23-953, paragraph (a), #lower income housing# shall be maintained and leased to #lower#, #moderate# or #middle income households#, as provided in this Section, for the life of the increased #floor area#, and in accordance with the approved #lower income housing plan#;~~

~~(ii)if the #lower income housing# is subject to the requirements of city, state or federal programs assisting the lower income housing that have size and distribution requirements conflicting with the size and distribution requirements of Section 23-951, paragraph (b), then the size and distribution requirements of Section 23-951, paragraph (b) may be waived by the Commissioner of Housing Preservation and Development to facilitate the #development# of #lower income housing#; and~~

~~(iii)Section 23-953 (a) shall be modified to provide that the #administering agent# shall not be required to verify the income of households in tenancy as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing plan#.~~

* * *

Chapter 7
Special 125th Street District

* * *

4/30/08

97-42
Floor Area Bonuses

The maximum #floor area ratio# for a #development# or #enlargement# within the #Special 125th Street District# may be increased by a floor area bonus, pursuant to ~~Sections 97-421 and~~ 23-90 (INCLUSIONARY HOUSING), inclusive, or 97-422 (Floor area bonus for visual or performing arts uses), which may be used concurrently.

4/30/08

97-421
Inclusionary Housing

Within the #Special 125th Street District#, C4-4D, C4-7 and C6-3 Districts shall be #Inclusionary Housing designated areas#, pursuant to Section 12-10 (DEFINITIONS), for the purpose of making the Inclusionary Housing Program regulations of Section 23-90, inclusive, and this Section, applicable within the Special District. Within such #Inclusionary Housing designated areas#, the #residential floor area ratio# may be increased by an Inclusionary Housing bonus, pursuant to the provisions of Sections 23-90 (INCLUSIONARY HOUSING), inclusive.

* * *

Chapter 8
Special West Chelsea District

*** * ***

98-26
Modifications of Inclusionary Housing Program

~~The provisions of Section 23-90 (INCLUSIONARY HOUSING), inclusive are incorporated and modified~~ ~~w~~Within the #Special West Chelsea District#, C6-3 and C6-4 Districts within Subareas A through D, and I, shall be #Inclusionary Housing designated areas#, pursuant to Section 12-10 (DEFINITIONS), for the purpose of making the Inclusionary Housing program regulations of Section 23-90, inclusive, applicable as modified within the Special District. ~~as set forth in this Section, inclusive.~~

98-261
Definitions
For the purposes of this Chapter, matter in italics is defined in Sections 12-10 or in Section 23-90 (INCLUSIONARY HOUSING), inclusive. ~~The following definitions in Section 23-93 shall be modified:~~

~~Administering agent~~

~~The "administering agent" is not required to be a not-for-profit organization if the #floor area# of the #standard units# comprising the #lower income housing# constitutes less than half of the total #residential floor area# or community facility #floor area used# as a not-for-profit institution with sleeping accommodations in the #building#.~~

~~Fair rent~~

~~At initial occupancy of #lower income housing# that is occupied by a #moderate income~~

~~household# or a #middle income household# as defined in this Section, “fair rent” shall include an annual rent for each such housing unit equal to not more than 30 percent of the annual income of the tenant of such housing (the “30 Percent Standard”).~~

~~Upon renewal of a lease for such an existing tenant in #lower income housing#, #fair rent# (the "Rent Stabilization Standard") shall be not more than the then-current #fair rent# for such housing plus a percentage increase equal to the percentage increase for a renewal lease of the same term permitted by the Rent Guidelines Board, or its successor, for units subject to the rent stabilization law.~~

~~After initial occupancy, upon rental of #lower income housing# to a new tenant, #fair rent# shall be not more than the higher of:~~

~~(a) the then-currently applicable "30 Percent Standard"; or~~

~~(b) the Rent Stabilization Standard.~~

~~In order for rent to be #fair rent#, the following must also apply:~~

> ~~There shall be no additional charge to the tenant for the provision of heat and electric service, except that the Commissioner of Housing Preservation and Development may approve a #lower income housing plan# making a #lower income#, #moderate income# or #middle income household# responsible for the payment of utilities as long as the sum of the following do not exceed 30 percent of said #lower income#, #moderate income# or #middle income household’s# income:~~
>
> ~~(1) the initial #fair rent#; and~~
>
> ~~(2) the monthly costs of a reasonable compensation for these utilities, by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.~~

~~However, the Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of City, State or Federal programs assisting #lower income housing# will be considered #fair rent#, provided that such rents do not exceed 30 percent of a #moderate income# or #middle income household#’s income, as applicable, and provided further that upon expiration or termination of the requirements of the City, State or Federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable 30 Percent Standard or the Rent Stabilization Standard.~~

~~#Fair rent# shall include, in addition to that rent permitted pursuant to Section 23-93, the payment of principal and interest on mortgage debt, and #lower income#, #moderate income# or #middle income housing# may secure such debt, provided that, as of the date of the approval of the #lower income housing plan#, the Commissioner of Housing Preservation and Development finds that the total annual rent, when such interest and principal payments are deducted, is in compliance with the requirements of paragraph (c) (Rent levels) of Section 23-95 (Lower Income Housing Requirements), and provided that the lender agrees to enter into a written agreement which subordinates such debt to the provisions of the #lower income housing plan#.~~

~~Lower income household~~

~~“Lower income households” shall also include all existing households in tenancy, provided such households occupy units that are within a #building# in which rents for all occupied units are regulated by City or State law, and the aggregate maximum permitted annual rent roll for such occupied units, divided by the number of occupied units, is less than 30 percent of the applicable income limit for a #lower income household# as provided in this Section. In determining the applicable income limit for such #lower income households#, the Commissioner of Housing Preservation and Development may make adjustments, consistent with the U.S. Department of Housing and Urban Development regulations, for the number of persons residing in each unit.~~

~~Lower income housing~~

~~For the purposes of this Section, "lower income housing" shall include #standard units# assisted under City, State or Federal programs, where such housing is occupied, or to be occupied, by #lower income#, #moderate income# or #middle income households#.~~

~~Moderate income household~~

~~For the purposes of this Section, a "moderate income household" is a #family# having an income equal to or less than the following proportion of the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U.S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments: 125/80.~~

~~Middle income household~~

~~For the purposes of this Section, a "middle income household" is a #family# having an income equal to or less than the following proportion of the income limits (the "80 Percent of SMSA Limits") for New York City residents established by the U. S. Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments: 17~~5/80.

98-262
Floor area increase

For #developments# or #enlargements# that have increased their permitted #floor area# through the transfer of development rights from the #High Line Transfer Corridor# by the minimum amount specified in the table in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), and for conversions of non-#residential buildings#, or portions thereof, to #dwelling units# where the total #residential floor area# on the #zoning lot# will exceed the applicable basic maximum #floor area ratio# specified in the table in Section 98-22, such maximum permitted #floor area# may be increased through the provision of #affordable housing# pursuant to the Inclusionary Housing program as modified in Section 98-26, inclusive, to the maximum amount specified in the table in Section 98-22, provided that:

(a) In C6-4 Districts:

(1) the amount of #low income floor area# is equal to at least 20 percent of the total #residential floor area# on the #zoning lot# ~~is occupied by #lower income households#~~;

(2) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#, ~~is occupied by #lower income households#~~ and the amount of #moderate income floor areais equal to at least 15 percent of the total #residential floor area# on the #zoning lot# ~~is occupied by #moderate income households#~~; or

(3) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot#, ~~is occupied by #lower income households#~~ and the amount of #middle income floor area# is equal to at least 20 percent of the total #residential floor area# on the #zoning lot# ~~is occupied by #middle income households#~~.

(b) In C6-3 Districts:

(1) the amount of #low income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot# ~~is occupied by #lower income households#~~;

(2) the amount of #low income floor area# is equal to at least ~~5~~ five percent of the total #residential floor area# on the #zoning lot#, ~~is occupied by #lower income households#~~ and the amount of #moderate income floor area# is equal to at least 7.5 percent of the total #residential floor area# on the #zoning lot# ~~is occupied by #moderate income households#~~; or

(3) the amount of #low income floor area# is equal to at least ~~5~~ five percent of the total #residential floor area# on the #zoning lot#, ~~is occupied by #lower income households#~~ and the amount of #middle income floor area# is equal to at least 10 percent of the total #residential floor area# on the #zoning lot~~# is occupied by #middle income households#~~.

~~Where #lower#, #moderate# or #middle income housing# is provided on a #zoning lot# other than the #zoning lot# occupied by the #compensated development#, the percentage of #residential floor area# required to be occupied by such households pursuant to this Section shall be determined as a percentage of the #residential floor area# on the #zoning lot# of such #compensated development#, inclusive of #floor area# bonused pursuant to this Section.~~
For the purposes of this Section 98-262, inclusive, #low income floor area# may be considered #moderate income floor area# or #middle income floor area#, and #moderate income floor area# may be considered #middle income floor area#.

However, in those subareas, or portions thereof, where the Inclusionary Housing Program is applicable, and where the Chairperson of the Department of City Planning has certified that at least 90 percent of the total development rights within the #High Line Transfer Corridor# have been transferred pursuant to Section 98-30, no transfer of #floor area# pursuant to Section 98-30 shall be required, and the basic maximum #floor area ratio# of the #development# or #enlargement# may be increased by up to 2.5 in Subareas B, C and D and on any #zoning lot# located in Subarea I over which the #High Line# does not pass, and up to 5.5 in Subarea A, in accordance with the provisions of paragraph (c) of this Section.

(c) Affordable Housing Fund

Where the Chairperson of the City Planning Commission determines that more than 90 percent of the #floor area# eligible for transfer through the provisions of Section 98-30 have been transferred in accordance with such provisions, the Chairperson shall allow, by certification, an increase in #floor area# on any receiving site as specified in Section 98-33 (Transfer of Development Rights From the High Line Transfer Corridor), up to the amount that otherwise would have been permitted for such receiving site pursuant to Section 98-30, provided that instruments in a form acceptable to the City are executed ensuring that a contribution be deposited in the West Chelsea Affordable Housing Fund. Such fund shall be administered by the Department of Housing Preservation and Development and all contributions to such fund shall be used for the #development#, acquisition or rehabilitation of #low~~er~~#, #moderate# or #middle income housing# located in Community District 4 in the Borough of Manhattan. The execution of such instruments shall be a precondition to the filing for or issuing of any building permit for any #development# or #enlargement# utilizing such #floor area# increase. Such contribution amount, by square foot of #floor area# increase, shall be determined, at the time of such Chairperson's certification, by the Commission by rule, and may be adjusted by rule not more than once a year.

~~**Lower income housing requirements**~~

~~#Developments# that increase #floor area# in accordance with the provisions of Section 98-262 shall comply with the #lower income housing# requirements of Section 23-95, except as modified in this Section.~~

~~(a) The provisions of Section 23-95, paragraph (b) (Tenant selection), shall apply, except that in addition, incoming households of #standard units# in #lower income housing# may be #moderate# and #middle income households#, and sublessees of a #moderate# or #middle income household# may also be a #moderate# or #middle income household#.~~

~~Furthermore, on and after the issuance of a certificate of occupancy for #lower income housing#, the #administering agent# shall have a duty to rent such housing to #lower#, #moderate# or #middle income households#, as provided in this Section and in the approved #lower income housing plan#.~~

~~This duty to rent shall be satisfied by the #administering agent#, if such agent has in fact rented all such units to #lower#, #moderate# or #middle income households#, as provided in this Section, or has, in good faith, made a continuing public offer to rent such units at rents no greater than the rents authorized by this program or otherwise at law.~~

~~(b) The provisions of Section 23-95, paragraph (d) (Income verification), shall apply, except that prior to renting #lower income housing#, the #administering agent# shall verify the income of each household to occupy such housing, to assure that the households are #lower#, #moderate# or #middle income households# as provided by this Section. The #administering agent# shall submit an affidavit to the Commissioner of Housing Preservation and Development upon initial occupancy and annually thereafter attesting that all incoming occupants of #lower income housing# are #lower#, #moderate# or #middle income households# as required by the provisions of this Section and in the approved #lower income housing plan#.~~

~~(c) The provisions of Section 23-95, paragraph (g) (Insurance), may be modified by the Commissioner of Housing Preservation and Development to provide priority for lenders participating in the financing of #lower income housing# that is assisted under City, State or Federal programs.~~

~~(d) Permits and certificate of occupancy~~

~~The requirements of Section 23-95, paragraph (f), shall not apply. In lieu thereof, the provisions of this paragraph, (d), shall apply.~~

~~No building permit for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-262 (Floor area increase) shall be issued until the Commissioner of Housing Preservation and Development certifies that an acceptable #lower income housing plan# has been filed and approved.~~

~~No temporary certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-262 until a temporary certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued. No permanent certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-262 until a permanent certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued.~~

~~Prior to the issuance of any temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-262, the Commissioner of Housing Preservation and Development shall certify that the #lower income housing# is in compliance with the #lower income housing plan#.~~

~~(e) The provisions of Sections 23-951, 23-952 and 23-953 shall apply, except that with respect to Sections 23-951, paragraph (a), 23-952, paragraph (b) and 23-953, paragraph~~

~~(a), #lower income housing# shall be maintained and leased to #lower#, #moderate# or #middle income households#, as provided in this Section, for the life of the increased #floor area#, and in accordance with the approved #lower income housing plan#. Furthermore, the size and distribution requirements of Section 23-951, paragraph (b), may be waived by the Commissioner of Housing Preservation and Development to facilitate the #development# of #lower income housing#, and Section 23-953, paragraph (a), shall be modified to provide that the #administering agent# shall not be required to verify the income of households in tenancy as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing plan#.~~

* * *

ARTICLE XI
SPECIAL PURPOSE DISTRICTS

* * *

Chapter 5
Special Downtown Jamaica District

* * *

115-211
Special Inclusionary Housing regulations

(a) Applicability

R7A, R7X, C4-4A, C4-5X, C6-2, C6-3 and C6-4 Districts within the #Special Downtown Jamaica District# shall be #Inclusionary Housing designated areas#, pursuant to Section 12-10 (DEFINTIONS), for the purpose of making the Inclusionary Housing Program regulations of Section 23-90 (INCLUSIONARY HOUSING), inclusive, applicable as modified, within the Special District.

(b) Maximum #floor area ratio#

The maximum #floor area ratio# for any #building# containing #residences# shall not exceed the base #floor area ratio# set forth in the following table, except that such base #floor area ratio# may be increased to the maximum #floor area ratio# set forth in Section 23-95~~4~~2 through the provision of #low~~er~~ income housing#, pursuant to the provisions relating to #Inclusionary Housing designated areas# in Section 23-90 (INCLUSIONARY HOUSING), inclusive.

District	Base #Floor Area Ratio#
R7A C4-4A	3.45
R7X C4-5X	3.75
R8 C6-2	5.4
R9 C6-3	6.0
R10 C6-4	9.0

(c) Modification of location requirements

The requirements of paragraph (a) of Section 23-95~~2~~6 (Requirements for Generating Sites~~Substantial rehabilitation and off-site new construction options~~) shall be modified as follows: A #~~Lower income housing~~ generating site# may be located in any #Inclusionary Housing designated area# within the #Special Downtown Jamaica District#.

(d) Height and setback

The height and setback regulations of paragraph (~~b~~a) of Section 23-94~~2~~54 shall not apply.

In lieu thereof, the special height and setback regulations of Section 115-22, inclusive, of this Chapter shall apply.

* * *

Article XI - Special Purpose Districts

Chapter 7
Special Long Island City Mixed Use District

* * *

117-631
Floor area ratio and lot coverage modifications

(a) In the Dutch Kills Subdistrict, the #floor area# of a #building# shall not include floor space used for #accessory# off-street parking spaces provided in any #story# located not more than 33 feet above #curb level#, in any #building#, except where such floor space used for #accessory# parking is contained within a #public parking garage#.

(b) Maximum #floor area ratio# and lot coverage for #residential uses#

(1) M1-2/R5B designated district

The maximum #floor area ratio# for #residential use# shall be 1.65.

The maximum #lot coverage# for a #residential building# shall be 60 percent on an #interior lot# or #through lot# and 80 percent on a #corner lot#.

(2) M1-3/R7X designated district

(i) Inclusionary Housing Program

Where the designated district is M1-3/R7X within the Dutch Kills Subdistrict, such district shall be an #Inclusionary Housing designated area# pursuant to Section 12-10 (DEFINITIONS) for the purpose of making the Inclusionary Housing Program regulations of Section 23-90 (INCLUSIONARY HOUSING), inclusive, applicable as modified within the Special District.

(ii) Maximum #floor area ratio#

Within such #Inclusionary Housing designated area#, the maximum #floor area ratio# for any #building# containing a #residential use# shall not exceed the base #floor area ratio# of 3.75, except that such base #floor area ratio# may be increased to the maximum #floor area ratio# of 5.0 as set forth in Section 23-942 through the provision of #lower income housing#, pursuant to the provisions relating to #Inclusionary Housing designated areas# in Section 23-90.

* * *

Article XII - Special Purpose Districts

Chapter 3
Special Mixed Use District

* * *

123-64

Maximum Floor Area Ratio and Lot Coverage Requirements for Mixed Use Buildings

(a) Maximum #floor area ratio#

(1) Manufacturing or commercial portions

The maximum #floor area ratio# permitted for the #manufacturing# or #commercial# portion of a #mixed use building# in #Special Mixed Use Districts# shall be the applicable maximum #floor area ratio# permitted for #manufacturing# or #commercial buildings# under the provisions of Section 43-12, in accordance with the designated M1 District.

(2) Community facility portion

The maximum #floor area ratio# permitted for the #community facility# portion of a #mixed use building# in #Special Mixed Use Districts# shall be the applicable maximum #floor area ratio# permitted for #community facility buildings# in #Residence Districts# under the provisions of Section 24-11, in accordance with the designated #Residence District#.

(3) #Residential# portion

Where the #Residence District# designation is an R3, R4 or R5 District, the maximum #floor area ratio# permitted for the #residential# portion of a #mixed use building# in #Special Mixed Use Districts# shall be the applicable maximum #floor area ratio# permitted for #residential buildings# under the provisions of Sections 23-14 and 23-141, in accordance with the designated #Residence District#.

Where the #Residence District# designation is an R6, R7, R8, R9 or R10 District, the maximum #floor area ratio# permitted for the #residential# portion of a #mixed use building# in #Special Mixed Use Districts# shall be the applicable maximum #floor area ratio# permitted for #residential buildings# under the provisions of Section 123-63, in accordance with the designated #Residence District#.

(4) Maximum #floor area# in #mixed use buildings#

The maximum total #floor area# in a #mixed use building# in #Special Mixed Use Districts# shall be the maximum #floor area# permitted for either the #commercial#, #manufacturing#, #community facility# or #residential# portion of such #building#, as set forth in this Section, whichever permits the greatest amount of #floor area#.

However, in ~~the~~ #Inclusionary Housing designated areas# ~~set forth in Section 23-922 (Inclusionary Housing designated areas~~), except within Waterfront Access Plan BK-1, the maximum #floor area ratio~~s~~# permitted for #zoning lots# containing #residential# and #commercial#, #community facility#, or #manufacturing uses# shall be the base #floor area ratio# set forth in ~~of~~ Section 23-95~~4~~2 for the applicable district. Such base #floor area ratio# may be increased to the maximum #floor area ratio# set forth in such Section only through the provision of #lower income housing# pursuant to Section 23-90 (INCLUSIONARY HOUSING), inclusive~~(In Inclusionary Housing designated areas) shall apply~~.

* * *

Article XII - Special Purpose Districts

Chapter 5
Special Southern Hunters Point District

125-22
Newtown Creek Subdistrict

In the Newtown Creek Subdistrict, the maximum #floor area ratio# shall be 2.75, and may be increased only as set forth in this Section.

(a) #Floor area# bonus for public amenities

For #developments# located within the Newtown Creek Subdistrict that provide a publicly accessible private street and open area, the #floor area ratio# may be increased from 2.75 to a maximum permitted #floor area ratio# of 3.75, provided that the Chairperson of the City Planning Commission has certified that such publicly accessible private street and open area comply with the design standards of Section 125-44 (Private Street Requirements in Newtown Creek Subdistrict) and Section 125- 45 (Publicly Accessible Open Area in Newtown Creek Subdistrict).

(b) #Floor area# increase for Inclusionary Housing

(1) Within the #Special Southern Hunters Point District#, the Newtown Creek Subdistrict shall be an #Inclusionary Housing designated area#, pursuant to Section 12-10 (DEFINITIONS), for the purpose of making the Inclusionary Housing Program regulations of Section 23- 90, inclusive, and this Section, applicable within the Special District.

(2) In the Newtown Creek Subdistrict, for #developments# that provide a publicly accessible private street and open area that comply with the provisions of paragraph (a) of this Section, the #floor area ratio# for any #zoning lot# with #buildings# containing #residences# may be increased from 3.75 to a maximum #floor area ratio# of 5.0 through the provision of #lower income housing#, pursuant to the provisions relating to #Inclusionary Housing designated areas# in Section 23-90 (INCLUSIONARY HOUSING), except that:

(i) the height and setback regulations of paragraph (~~b~~a) of Section 23-94~~2~~54 shall not apply. In lieu thereof, the special height and setback regulations of Section 125-30 (HEIGHT AND SETBACK REGULATIONS), inclusive, of this Chapter shall apply; and

(ii) the provisions of paragraph (a)~~(2)~~ of Section 23- 9~~52~~6 (~~Substantial rehabilitation and off-site new construction options~~Requirements for Generating Sites) shall be modified to require that in the event the #low~~er~~ income housing# is not located within the same Community District as the #compensated ~~development~~zoning lot#, it ~~is~~shall be located within a one-half mile radius of the #compensated ~~development~~zoning lot# in an adjacent Community District in the Borough of Queens.