Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

27-161 - Additional requirements for rental affordable housing

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12/5/2024

The additional requirements of this Section shall apply to rental #affordable housing# for the entire #regulatory period#, except that rental #affordable housing# restricted pursuant to an #affordable housing regulatory agreement# shall not be required to comply with this Section.

(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 #households# that satisfy the #income bands# applicable to such unit.

(2) A tenant may, with the prior approval of #HPD#, 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 #restrictive declaration#.

(3) A #household# may rent an #affordable housing unit# that is restricted to occupancy by #households# of higher #income bands#, provided that the #household# is able to utilize rent subsidies pursuant to a rental assistance program administered by any Federal, State, or local agency or instrumentality to afford the applicable #monthly rent#.

(4) #Affordable housing units# shall be marketed and leased in accordance with the #guidelines#.

(b) Monthly rent

(1) Unless alternative provisions are established in the #restrictive declaration# or #guidelines#, the #restrictive declaration# 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# and shall thereafter remain subject to #rent stabilization# for the entire #regulatory period# and thereafter until vacancy.

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

The #restrictive declaration# 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#. However, the #restrictive declaration# shall provide that this requirement shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant# until the first vacancy after the #restrictive declaration date#.

(2) Unless alternative provisions are established in the #restrictive declaration# or #guidelines#, the #restrictive declaration# 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#. However, the #restrictive declaration# shall provide that these requirements shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant#, until the first vacancy after the #restrictive declaration date#.

However, #HPD# may adopt #guidelines# to permit the #monthly rent# to exceed the #maximum monthly rent#, provided that the #monthly rent#, less rent subsidies pursuant to a rental assistance program administered by any Federal, State, or local agency or instrumentality, does not exceed the lesser of the #maximum monthly rent# or the #legal regulated rent#.

(3) Each year after #rent-up#, in the month specified in the #restrictive declaration# or the #guidelines#, the owner of the #affordable housing units# 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.

(4) For any #affordable housing unit# subject to #rent stabilization#, the applicable #restrictive declaration# 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.

(5) Unless alternative provisions are established in the #restrictive declaration# or #guidelines#, the #restrictive declaration# 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#.

(6) Unless alternative provisions are established in the #restrictive declaration# or #guidelines#, the #restrictive declaration# 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 #households# of the applicable #income band# for the entire #regulatory period#, except as may be otherwise set forth in the #guidelines# with respect to internal transfers.

(2) The owner of the #affordable housing units# 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 #household# that qualifies at the #income band# applicable to such unit, except as may be otherwise set forth in the #guidelines# with respect to internal transfers.

(3) Each year after #rent-up#, in the month specified in the #restrictive declaration# or the #guidelines#, the owner of the #affordable housing units# 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 application

(1) #An #affordable housing application# shall include the building plans, state the number, bedroom mix and #income band# applicable to the #affordable housing units# to be #developed#, #converted#, or preserved, and include such additional information as #HPD# deems necessary to ensure the satisfaction of the requirements of Section 27-10, inclusive.

(2) A copy of any #affordable housing application# shall be delivered, concurrently with its submission to #HPD#, to the affected Community Board.

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

The additional requirements of this paragraph, (e), shall apply to rental #preservation affordable housing#:

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

(2) on the #restrictive declaration date#, the average of the #legal regulated rents# for all #affordable housing units# in the #UAP site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of 60 percent of the income index divided by 12;

(3) on the #restrictive declaration date#, #HPD# shall have determined that the condition of the #UAP site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing application# and the #restrictive declaration#, 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 #restrictive declaration date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #restrictive declaration date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #restrictive declaration 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 #UAP site#, even though such increases may be permitted by other laws;

(6) proceeds from sales of offsite #affordable floor area# must be approved by #HPD# as set forth in the #guidelines# or #restrictive declaration#; and

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