

Amendment to § 2-08 to conform the Loft Board's rules regarding IMD qualifying criteria for coverage and registration, to the amendments made to the MDL, effective as of June 21, 2010.

NEW YORK CITY LOFT BOARD

NOTICE OF OPPORTUNITY TO COMMENT ON PROPOSED RULES

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY LOFT BOARD by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter that, the New York City Loft Board intends to amend section 2-08 of Title 29 of the Rules of the City of New York, to conform the Loft Board's rules to the amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010.

Written comments regarding this proposed rule may be sent to the New York City Loft Board, 100 Gold Street, 2<sup>nd</sup> Floor, New York, New York 10038 on or before January 14, 2011. A public hearing will be held on January 20, 2011 at 22 Reade Street, First Floor, New York, NY, commencing at 2:00 p.m. Persons seeking to testify are requested to notify the Loft Board at the foregoing address or by telephone at (212) 566-5663. Persons who require a sign language interpreter and persons who require a reasonable accommodation for a disability at the hearing are asked to notify the Loft Board by January 14, 2011. Persons may also submit comments on the proposed rule electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by January 14, 2011. Written comments and an audiotape of oral comments received at the hearing will be available for public inspection, in a timely manner, between the hours of 10:00 a.m. to 4:00 p.m. at the offices of the Loft Board.

This proposed rule is not listed in the Loft Board's Regulatory Agenda because it was not anticipated at the time.

Section 2-08 of Title 29 of the Rules of the City of New York is amended to read as follows:

**§2-08 Coverage and Issues of Status.**

Registration as an interim multiple dwelling (hereinafter "IMD") with the New York City Loft Board (hereinafter "Loft Board") shall be required when a building, structure or

portion thereof meets the criteria for an IMD set forth in §281 of Article 7-C of the Multiple Dwelling Law (hereinafter “MDL”) as further delineated in the following [regulations] rules.

(a) *Definitions.*

**1. Building.**

(i) As defined in §12-10 of the Zoning Resolution, a building is any structure which:

- (A) is permanently affixed to the land;
- (B) has one or more floors and a roof; and
- (C) is bounded by either open area or the lot lines of a zoning lot

[(D)] (ii) A building may be a row of structures and have one or more structures on a single zoning lot.

[(ii)](iii) In deciding whether a structure is a single building, as distinguished from more than one building for purposes of IMD determination, the Loft Board shall employ the definition set forth above and consider *inter alia* the following factors:

- (A) whether the structure is under common ownership;
- (B) whether contiguous portions of the structure within the same zoning lot are separated by individual load-bearing walls, without openings for the full length of their contiguity, as distinguished from non-loadbearing partitions;

(C) whether the structure has been operated as a single entity, having one or more of the following:

- (a) a common boiler;
- (b) a common sprinkler system;
- (c) internal passageways;
- (d) common fire escapes; or
- [(d)]e) other indicia of operation as a single entity.

(D) whether the owner or a predecessor has at any time represented in applications or other official papers that the structure was a single building;

(E) whether a single certificate of occupancy has been requested or issued for the structure; and

(F) the pattern of usage of the building during the applicable qualifying window periods: (i) from April 1, 1980, to December 1, 1981, for buildings seeking coverage under Article 7-C pursuant to MDL § 281(1), (ii) from April 1, 1980 to May 1, 1987, for buildings seeking coverage under Article 7-C pursuant to MDL § 281(4), or (iii) January 1, 2008 to December 31, 2009, for buildings seeking coverage under Article 7-C pursuant to MDL § 281(5).

**2. Grandfathering.** For purposes of these [regulations] rules, "grandfathering" means the administrative process by which a residential unit, located where residential use is not otherwise permitted by the Zoning Resolution, is determined by the agency designated in the Zoning Resolution, to have been residentially occupied on a specified date, and is therefore a legal residential use as of right, eligible for Article 7-C coverage.\* Grandfathering may also be accomplished by a special permit process defined in

subdivision (ii) below, which requires a further discretionary approval in addition to determination of occupancy on a specified date.

(i) *Minor modification and an administrative certification.* A "minor modification" and an "administrative certification" as found in MDL § 281(2)(i) [of the Multiple Dwelling Law] are terms which refer to various procedures which may be specified in the Zoning Resolution in addition to the grandfathering determinations of occupancy concerning non-discretionary actions by the agency to which an application must be made.

(ii) *Special permit.* A "special permit" as found in MDL § 281(2)(iv) [of the Multiple Dwelling Law] is a term referring to a grandfathering procedure specified in the Zoning Resolution which involves a discretionary determination and approval by the City Planning Commission, to which the application must initially be made, and by the Board of Estimate or any entity which succeeds it in this function.\*\*

**3. Living Independently.** For purposes of MDL § 281 and these rules, "living independently" means having attributes of 'independent living' by a family in each residential unit, such as:

(i) a separate entrance providing direct access to the residential unit from a street or public area, such as a hallway, elevator or stairway within a building;

(ii) one or more rooms such as a kitchen area, a bathroom, a sleeping area and a living room area arranged to be occupied exclusively by the members of a family and their guests, which room or rooms are separated and set apart from all other rooms within a building; and

(iii) such other indicia of independent living which demonstrate the residential unit's use as a residence of a family living independently.

**4. Residential unit.** [For purposes of these regulations the residence or home of a "family" as defined in Multiple Dwelling Law §4(5)\*\*\* shall be deemed a residential unit.] (i) In order for a residential unit to be deemed [qualify as] an IMD [residential] unit qualifying for coverage under Article 7-C, the unit must [have attributes of independent living such as:

A separate entrance providing direct access to the unit from a street or public area, such as a hallway, elevator or stairway within a building;

One or more rooms arranged to be occupied by the members of a family, which room or rooms are separated and set apart from all other rooms within a building; and

Such other indicia of independent living which demonstrate the unit's use as a residence of a family.];

(A) be the residence or home of a "family" as defined in MDL § 4(5) that is living independently;

(B) be located in a building, a portion of which was occupied at any time for manufacturing, commercial or warehouse purposes;

(C) be located in a building that lacks a residential certificate of occupancy pursuant to MDL § 301, as further delineated in § 2-08(b) of these rules;

(D) except as set forth below in §§ 2-08(a)(4)(ii) and (iii), be located in a geographical area in which the Zoning Resolution permits residential use as of right or in which the residential use may become a use as of right as a result of approval of a

grandfathering application, in accordance with MDL §§ 281(2)(i) or (iv); or is located in a study area designated by the Zoning Resolution for possible rezoning to permit residential use, in accordance with MDL § 281(2)(iii);

(E) be located in a building that is not municipally owned;

(F) except as set forth below in §§ 2-08(a)(4)(ii) and (iii), be occupied by a family living independently for residential purposes on December 1, 1981, since April 1, 1980 for coverage under § 281(1) and

(G) pursuant to MDL § 282-a, either (i) have been registered as part of an IMD building, structure or portion thereof by the landlord of such building, or (ii) have been included as part of an application for coverage filed by a residential occupant of the building, structure or portion thereof, of which the residential unit is located, in each case, by that certain date which is 6 months after the date the Loft Board shall have adopted all rules necessary in order to implement the provisions of the chapter of the laws of 2010 which added MDL § 281(5).

(ii) In addition to the criteria set forth in subparagraph (i) of this § 2-08(a)(4), in order for a residential unit to qualify for coverage under Article 7-C pursuant to MDL § 281(4), such residence or unit must have been occupied by a family living independently for residential purposes on May 1, 1987, since December 1, 1981, and occupied for residential purposes since April 1, 1980, regardless of whether the building is located in a geographical area in which the Zoning Resolution permits residential use as of right, or through grandfathering as defined in § 2-08(a)(2) of these rules or because the building is located in a study area as defined in § 2-08(a)(5) of these rules.

(iii) Notwithstanding the foregoing, in order for a residential unit to qualify for coverage under Article 7-C pursuant to MDL § 281(5), as set forth in these rules, a residential unit is not required to have been residentially occupied between April 1, 1980 through December 1, 1981, but is required to have been occupied by a family living independently for residential purposes during a period of twelve consecutive months between January 1, 2008 through December 31, 2009, as further delineated in §§ 2-08(c)(3) and 2-08(c)(4) of these rules, regardless of whether the building is geographically located in an area in which the Zoning Resolution permits residential use. In addition to the criteria set forth in subparagraph (A), (B), (C), (E) and (G) of § 2-08(a)(4)(i), in order for a residential unit to qualify as an IMD unit for purposes of coverage under Article 7-C pursuant to MDL § 281(5), such residence or home must:

(A) not be located in a “cellar” or “basement,” as such terms are defined in MDL §§ 4(37) and 4(38) respectively;

(B) have a means of access from a street or public area, such as a hallway, elevator or stairway, and the unit must not require passage through another residence or unit to obtain access;

(C) contain at least 1 window that opens onto a street, lawful yard or court;

(D) contain at least 550 square feet in area;

(E) not be located in an industrial business zone, as such term is defined in chapter 6-D of Title 22 of the New York City Administrative Code, except for buildings located in the:

(i) Williamsburg/Greenpoint Industrial Business Zone;

(ii) North Brooklyn Industrial Business Zone; or

(iii) Long Island City Industrial Business Zone, provided that the residential units meet the qualifying criteria set forth above and the buildings are located in the following areas of a Long Island City industrial business zone:

(a) have frontage on either side of 47<sup>th</sup> Avenue<sup>1</sup>,

(b) be located north of 47<sup>th</sup> Avenue and south of Skillman Avenue, or

(c) be located north of 44<sup>th</sup> Drive, south of Queens Plaza north and west of 23<sup>rd</sup> Street; and

(F) not be located in the same building that contained, as of June 21, 2010, a use actively and currently pursued that is determined by the Loft Board to be inherently incompatible with residential use.

**5. Study area.** A study area as found in MDL § 281(2)(iii) [of the Multiple Dwelling Law] is a term referring to an area, defined in § 42-02 of the Zoning Resolution, which is currently zoned as manufacturing and under study by the City Planning Commission for a determination of the appropriateness of the zoning.

*(b) Certificate of occupancy.*

(1) Registration as an IMD shall not be required of any building, structure or portion thereof for which a final[, as distinguished from a temporary,] residential certificate of occupancy was issued pursuant to MDL § 301 [of the Multiple Dwelling Law] prior to: (i) June 21, 1982, with respect to buildings, structures or portions thereof covered under Article 7-C solely pursuant to MDL § 281(1); (ii) July 27, 1987, with respect to buildings, structures or portions thereof covered under Article 7-C solely pursuant to MDL § 281(4); or (iii) June 21, 2010, with respect to buildings, structures or portions thereof covered under Article 7-C pursuant to MDL § 281(5)[, shall not be required for such units designated as residential on the certificate of occupancy]. Such units shall be exempt from Article 7-C coverage unless the residential certificate of occupancy is revoked.

(2) Registration as an IMD with the Loft Board shall be required of:

(i) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in (A) MDL § 281(1) [of the Multiple Dwelling Law] and these [regulations] rules, for all residentially-occupied units which lacked a final residential certificate of occupancy issued pursuant to § 301 of the [Multiple Dwelling Law] MDL prior to June 21, 1982, (B) MDL § 281(4) and these rules for all residentially-occupied units which lacked a final certificate of occupancy issued pursuant to § 301 of the MDL prior to July 27, 1987, or (C) MDL § 281(5), and these rules, for all residentially-occupied units which lacked a final certificate of occupancy issued pursuant to MDL § 301, prior to June 21, 2010. Issuance of a [residential] certificate of occupancy pursuant to MDL § 301 for such units on or after June 21, 1982, July 27, 1987, or June 21, 2010, as applicable, will not be the basis for exemption from Article 7-C coverage;

(ii) Any building, structure or portion thereof which meets the criteria for an IMD set forth in MDL § 281 [of the Multiple Dwelling Law] and these [regulations] rules, for

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<sup>1</sup> The New York State Legislature made a typographical error in § 281(5) by listing 47<sup>th</sup> Street as in the Long Island City Industrial Business Zone. The intended street name is 47<sup>th</sup> Avenue not 47<sup>th</sup> Street. The correct name is listed herein.

all residentially occupied units which obtained a temporary[, but not final,] residential certificate of occupancy issued pursuant to MDL § 301 [of the Multiple Dwelling Law] prior to: June 21, 1982 for units covered under MDL § 281(1), July 27, 1987 for units covered under MDL § 281(4) and June 21, 2010 for units covered under MDL § 281(5). Issuance of a temporary residential certificate of occupancy for such units prior to these dates will not be the basis for exemption from Article 7-C coverage. [if on or after June 21, 1982 a period of time of any length existed for whatever reason whatsoever during which a temporary or final certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law was not in effect for such units.]

(iii) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281 [of the Multiple Dwelling Law] and these [regulations] rules, for all residentially occupied units for which a [temporary or] final [residential] certificate of occupancy issued pursuant to MDL § 301 has been revoked. The prior issuance of a [temporary or] final certificate of occupancy which has been revoked [for such units] will not be the basis for exemption from Article 7-C coverage.

(iv) Any building, structure or portion thereof that otherwise meets the criteria for an IMD set forth in MDL § 281 and these rules, and contains residential units which were subsequently converted to non-residential use following the applicable time period required to qualify such unit for coverage under Article 7-C. Current commercial use or commercial use after the qualifying window period shall not be the basis for exemption from Article 7-C coverage.

(c) *Qualifying period of occupancy.*

(1) Registration [as an IMD] with the Loft Board shall be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281(1) [of the Multiple Dwelling Law] and these [regulations] rules, and had at least three units residentially occupied on December 1, 1981, since April 1, 1980. If the building, structure or portion thereof contained three units so occupied on December 1, 1981, and on April 1, 1980, and if such residential use is permissible under the Zoning Resolution as of right, or through grandfathering, or the units are in a study area as defined in § 2-08(a)(5) ["Study area"] of these [regulations] rules, there shall be a presumption that the building is an IMD and that such units are covered under Article 7-C. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981, such unit shall not be counted for purposes of determining whether the building qualifies for coverage as [is] an IMD pursuant to MDL § 281(1). The occupant of any unit which changed to a bona fide exclusively non-residential use must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(2) Registration [as an IMD] with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281(4) and these rules, that had one or more units residentially occupied on May 1, 1987, since December 1, 1981, that was occupied for residential purposes since April 1, 1980, regardless of whether residential use is permitted under the Zoning Resolution as of right, or through grandfathering as defined in § 2-08(a)(2)

["Grandfathering"] of these rules, or because the building is located in a study area as defined in § 2-08(a)(5) ["Study area"] of these rules. Residential occupancy of one or more units of the building, structure or portion thereof, as described in this paragraph, on May 1, 1987, on December 1, 1981 and on April 1, 1980, shall create a presumption that the building is an IMD or that such unit or units are covered under Article 7-C. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981 or between December 1, 1981 and May 1, 1987, such unit shall not be counted for purposes of determining whether the building qualifies for coverage as [is] an IMD pursuant to MDL § 281(4). The occupant of any unit which changed to a bona fide exclusively non-residential use must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(3) Registration with the Loft Board shall also be required of any building, structure or portion thereof which otherwise meets the criteria for an IMD set forth in MDL § 281(5) and these rules that contained at least three units residentially occupied by families living independently from one another for a period of twelve consecutive months between January 1, 2008 through December 31, 2009, regardless of whether residential use is permitted under the Zoning Resolution. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit during such qualifying twelve consecutive month window period, such unit shall not be counted for purposes of determining whether the building qualifies for coverage as an IMD pursuant to MDL § 281(5). The occupant of any unit which changed to a bona fide exclusively non-residential use, must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted. It is not required that the units that seek coverage under MDL § 281(5) occupy their respective units during the same twelve month period to be granted Article 7-C coverage.

(4) Registration with the Loft Board shall also be required of any building, structure or portion thereof located in that certain area of Manhattan bounded on the south by West 24<sup>th</sup> Street, on the north by West 27<sup>th</sup> Street, on the east by Tenth Avenue and on the west by Eleventh Avenue, which contain at least two units residentially occupied by families living independently from one another for a period of twelve consecutive months between January 1, 2008 through December 31, 2009, regardless of whether residential use is permitted under the Zoning Resolution. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit during such qualifying twelve consecutive month window period, such unit shall not be counted for purposes of determining whether the building qualifies for coverage as an IMD pursuant to MDL § 281(5). The occupant of any unit which changed to a bona fide exclusively non-residential use must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

([3]5) Neither vacancies of any duration for units residentially occupied on: (i) December 1, 1981, and on April 1, 1980 as set forth in § 2-08(c)(1) above, or (ii) [for units occupied on] May 1, 1987, [on] December 1, 1981 and [on] April 1, 1980 as set forth in § 2-08(c)(2) above, or (iii) at any time prior to or following the qualifying twelve consecutive month window period between January 1, 2008 through December 31, 2009, as set forth in §§ 2-08(c)(3) or (c)(4) above, nor a change or changes [or] of residential

occupants in any such units during the intervening period(s) will be the basis for exemption from Article 7-C coverage.

(d) *Calculation of residential units.*

(1) [Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof which has a minimum of three residential units, except as provided in subparagraph (v) of paragraph 1 of this subdivision, and which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations.] For purposes of counting residential units to determine whether a building qualifies for coverage as an IMD building and must be registered, the following types of units may qualify for Article 7-C coverage, provided that each unit satisfies the criteria set forth in § 2-08(a)(4) of these rules for coverage under MDL §§§ 281(1), 281(4) and 281(5) [term "residential unit" shall include]:

[(i) Any unit which meets the criteria of §281(1) of the Multiple Dwelling Law in that:]

[(A) a portion of the building or structure within which the unit is located was occupied at any time for manufacturing, commercial or warehouse purposes;]

[(B) it lacked a residential certificate of occupancy pursuant to §301 of the Multiple Dwelling Law as further delineated in §§2-08(b)(1) and (2) of these regulations;]

[(C) it was occupied for residential purposes on December 1, 1981, since April 1, 1980, as further delineated in §2-08(c) of these regulations; and]

[(D) it is located in a geographical area in which the Zoning Resolution permits residential use as of right or in which the residential use may become a use as of right as a result of approval of a grandfathering application, in accordance with §281(2)(i) or (iv) of the Multiple Dwelling Law as defined in §2-08 (a) "Grandfathering" of these regulations; or is located in a study area designated by the Zoning Resolution for possible rezoning to permit residential use, in accordance with §281(2)(iii) of the Multiple Dwelling Law, as defined in §2-08(a) "Study area" of these regulations;]

[(ii) Any] (i) any residential unit designated as "Artist in Residence" (A.I.R.) pursuant to directives of the Department of Buildings[,] creating such status;

[(iii) Any] (ii) any residential unit designated as "joint living work quarters for artists" [pursuant to the Zoning Resolution] except as provided below in § 2-08(d)(2)(ii) of this subsection;

[(iv) Any] (iii) any residential unit [residentially-] occupied by a subtenant or assignee of the prime tenant of such unit.

[(v) Registration as an IMD with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281, which has one or more residential units that were residentially occupied on May 1, 1987, since December 1, 1981, that were occupied for residential purposes since April 1, 1980, as further delineated in § 2-08(c)(2) of these rules, regardless of whether the building is located in a geographical area in which the Zoning Resolution permits residential use as of right, or through grandfathering as defined in § 2-08(a) "Grandfathering" of these rules or because the building is located in a study area as defined in § 2-08(a) "Study area" of these rules. However, for] (iv) For a unit to qualify as a ["residential IMD unit]" pursuant to this subparagraph], the building in which it is



located must meet the criteria of MDL §§ 281[(1)] and 28[2]1(2)(ii) in that: (A) a portion of the building or structure was occupied at any time for manufacturing, commercial or warehouse purposes; (B) the building lacked a residential certificate of occupancy pursuant to MDL §301 as further delineated in §§ 2-08(b)(1) and (2) of these rules; (C) except as otherwise set forth in MDL § 281(5) and these rules, it contained at least three units residentially occupied on December 1, 1981, since April 1, 1980; and (D) it is not municipally owned.

(2) For purposes of counting to determine whether a building qualifies as an IMD and is covered under Article 7-C, residential units described as follows shall not be included:

(i) [A]any units designated as residential on a final certification of occupancy issued pursuant to MDL §301[of the Multiple Dwelling Law] prior to June 21, 1982;

(ii) [A]any units designated as "joint living work quarters for artists" on a final certificate of occupancy issued prior to June 21, 1982;

(iii) [A]any units designated for a commercial use with an accessory residential use on a final certificate of occupancy issued prior to June 21, 1982.

(e) *Zoning regulations.*

(1) Registration as an IMD building shall be required of any building, structure or portion thereof, which meets the criteria for an IMD as set forth in MDL §281(1) [of the Multiple Dwelling Law] and [the] these [regulations] rules including, without limitation, § 2-08(a)(4) [issued pursuant thereto], except that any building located in a zoning district designated as manufacturing in the Zoning Resolution, for which district there are no "grandfathering" provisions as defined in these [regulations] rules shall not qualify as an IMD. This exception, however, shall not apply to buildings, structures or portions thereof which otherwise meet the criteria of:

(i) MDL § 281(1) [for an IMD], if such IMD building is located in a "Study area" as defined in § 2-08(a)5 ["Study area"] of these [regulations] rules and the registration of such building shall be required[.] or

(ii) [This exception shall also not apply to buildings, structures or portions thereof which otherwise meet the criteria of] MDL § 281(1), if such IMD building also meets the requirements of MDL § 281(4) and the rules issued pursuant thereto or

(iii) MDL § 281(5), and these rules.

Except for a building or structure or portion thereof which qualifies for coverage under Article 7-C solely by reason of MDL §§ 281(4) or 281(5), the zoning regulations, and the grandfathering provisions for the district in which a building or structure is located [will] determine whether and when the owner of such building, which otherwise meets the criteria for an IMD set forth in MDL § 281[(1)] and [the] these [regulations] rules issued pursuant thereto, is mandated to meet the compliance requirements for legalization set forth in MDL § 284(1).

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281(1) [of the Multiple Dwelling Law] and these [regulations] rules and is located in an area which permits residential use as of right, shall be obligated to meet the compliance requirements for legalization by the dates designated in MDL § 284(1), except as provided in §§ 2-08(e)(4)(i) and (iii) infra and as further

delineated in § 2-01(a) of these rules. The term "residential use as of right" as employed in MDL § 281(2) [of Article 7-C] means that the New York City Zoning Resolution permits residential use in the area in which the building is located [zoning regulations permit residential use without requiring further approvals pursuant to the Zoning Resolution].

(3) Any IMD unit designated as "joint living work quarters for artists" in a zoning district which does not otherwise permit residential use as of right, and which is currently occupied by a resident or residents who cannot qualify as certified artists, as defined in § 276 of [7-C] Article 7-B of the MDL, shall qualify for Article 7-C coverage, if the building in which such unit is contained[,] otherwise meets the criteria for an IMD set forth in MDL § 281(1) [of the Multiple Dwelling Law] and these [regulations] rules. The non-artist status of the current occupant shall not be the basis for exemption from Article 7-C coverage [including the legalization requirements of §284(1)]. At the time of issuance of the final certificate of occupancy, the occupant of such a unit must be in compliance with the Zoning Resolution or the unit must be vacant.

(4) Legalization compliance timetable.

(i) For any building, structure or portion thereof, which contains fewer than three residential units as of right and one or more residential units eligible for coverage by employing one of the grandfathering procedures set forth in MDL §§ 281(2)(i) or (iv) [of the Multiple Dwelling Law] and defined in § 2-08(a)(2) ["Grandfathering"] (i) and (ii) of these [regulations] rules, the timing of the compliance requirements of MDL § 284(1) [of the Multiple Dwelling Law] shall commence upon approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of residential units qualifying the building as an IMD.

(ii) For any registered building in the category described in § 2-08[ ](e)(4)(i) of these [regulations] rules, for which denial of a grandfathering application reduces the number of qualifying residential units below three, IMD status for such building expires, and the other residential units in such building cease to be covered by Article 7-C, unless the building qualifies for coverage under Article 7-C pursuant to MDL §§ 281(4) or (5) and [the] these rules [issued pursuant thereto].

(iii) Any building, structure or portion thereof which contains three or more residential units as of right, and one or more additional units eligible for coverage by employing one of the grandfathering provisions of MDL §§ 281(2)(i) or (iv) [of the Multiple Dwelling Law], shall be obligated to meet the compliance requirements for legalization by the dates designated in MDL § 284(1) [of the Multiple Dwelling Law], as further delineated in § 2-01(a) of these rules [issued pursuant thereto], for such as of right residential units. The timing of the compliance requirements for the other eligible units shall commence as follows:

(A) Where an application for grandfathering for such unit is made pursuant to one of the procedures designated as a "minor modification" or "administrative certification" in MDL § 281(2)(i) [of the Multiple Dwelling Law], upon a determination of residential occupancy on the date designated in the particular grandfathering provision of the Zoning Resolution;

(B) Where an application for grandfathering for such unit is made pursuant to a "special permit application as designated in MDL § 281(2)(iv) [of the Multiple Dwelling Law], upon the granting of such special permit.

(iv) For any unit eligible for coverage by employment of one of the grandfathering procedures set forth in MDL §§ 281(2)(i) or (iv) [of the Multiple Dwelling Law] and defined in §§ 2-08(a)(2) ["Grandfathering"] (i) and (ii), the final denial of a grandfathering application or the failure to apply for grandfathering within the time period specified in the Zoning Resolution will terminate coverage for such unit unless such unit qualifies for coverage under Article 7-C pursuant to MDL § 281(4).

(v) For any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL § 281(1) [of the Multiple Dwelling Law] and these [regulations] rules, but is located in an area designated by the Zoning Resolution as a study area, the timing of the compliance requirements of MDL § 284(1) shall commence upon rezoning of such study area to permit residential use as of right. If the rezoning permits residential use only through grandfathering procedures, the timing of the compliance requirements of MDL § 284(1) and the rules issued pursuant thereto shall commence upon the approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of units qualifying the building as an IMD.

For any registered building in a study area as described in § 2-08(a)(5) ["Study area"] of these [regulations] rules, for which the City Planning Commission [has] approved neither rezoning nor grandfathering by December 31, 1983, IMD status for such building expires, and all of the units in such building cease to be covered by Article 7-C, unless there is a recommended extension of such deadline by the City Planning Commission. If the Board of Estimate, or its successor, disapproves rezoning for residential use or grandfathering or the extension of such deadline, IMD status for such building expires and all the units in such building cease to be covered by Article 7-C.

[However] Notwithstanding the foregoing, any building, structure or portion thereof which ceased to be covered under Article 7-C as a result of the failure to rezone the study area, permit grandfathering or to extend the deadlines as set forth in the foregoing paragraph shall be covered by Article 7-C if it meets the criteria of MDL §§ 281(4) or 281(5) [of the Multiple Dwelling Law].

(vi) For any building, structure or portion thereof that meets the criteria for an IMD set forth in MDL § 281(5) and these rules, the timing of the code-compliance deadlines set forth in MDL § 284(1) is triggered by the effective date of MDL § 281(5), which is June 21, 2010.

(vii) For any building, structure or portion thereof registered pursuant to MDL § 281(5) for which there is a revocation of IMD status of one or more units in the building by the Executive Director as a result of a determination that such unit(s) did not meet the qualifying criteria set forth in § 2-08(a)(4) of these rules, and such revocation reduces the number of qualifying residential units below three (or two, with respect to an IMD building located in the geographic area described in § 2-08(c)(4) of these rules), the IMD status for the entire such building shall expire and each of the units in the building shall be deemed to be "non-covered units." As set forth below, occupants of non-covered units are not entitled to the protections of Article 7-C. Residential occupancy of a non-covered unit shall not be permitted in the building until a final residential certificate of occupancy that includes the non-covered unit is obtained.

(f) *Municipally owned buildings.*

(1) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in MDL §[2-09] 281(1) [of the Multiple Dwelling Law] and these [regulations] rules, but is municipally owned, shall be exempt from coverage under [of] Article 7-C.

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in MDL §§ 281(1), 281(4) or 281(5) [of the Multiple Dwelling Law] and these [regulations] rules, formerly municipally owned, but for which title passed to a private owner, shall be required to register as an IMD and shall not be exempt from coverage under Article 7-C. The former ownership by the municipality shall not be the basis for exemption from Article 7-C coverage.

(g) *Accreted units.*

(1) (i) In a building, structure or portion thereof which meets the criteria of MDL §§281(1) and 281(2) or 281(4), [of the Multiple Dwelling Law] and these [regulations] rules, thereby qualifying as an IMD building, the occupant or occupants of any additional unit residentially occupied for the first time after April 1, 1980 but prior to April 1, 1981 in such IMD building may also be covered under Article 7-C.

(ii) In a building, structure or portion thereof that meets the criteria of MDL §§ 281(1) and 281(2) or 281(4), and these rules, thereby qualifying as an IMD building, the occupant or occupants of any additional unit residentially occupied during a period of twelve consecutive months between January 1, 2008 through December 31, 2009, in such IMD building may also be covered under Article 7-C.

[In order to qualify for coverage, the occupancy of such unit must be permissible under the Zoning Resolution. For purposes of §2-09(3) of the Multiple Dwelling Law, occupancy] Occupancy of such additional [units] unit(s) shall be deemed permissible if such additional unit(s) meet the criteria required for an IMD unit set forth in MDL § 281(5) as further delineated in these rules, including, without limitation, § 2-08(a)(4).[:]

[(i) the unit is located in a zoning district where residential use as of right is permitted under the Zoning Resolution; or]

[(ii) the unit is designated as "joint living work quarters for artist" in a zoning district which does not otherwise permit residential use as of right, regardless of whether the occupant or occupants qualify as "certified artists" as defined in §12-10 of the Zoning Resolution; or]

[(iii) the unit can qualify as having a legal residential use pursuant to one of the grandfathering provisions of the Zoning Resolution, as defined in §2-08(a)"Grandfathering" of these regulations; or]

[(iv) the unit is in a study area, as defined in §2-08(a) "Study area" of these regulations, for which the City Planning Commission has approved either rezoning for residential use or grandfathering by December 31, 1983.]

(2) Registration of such accreted units as part of the IMD shall be required for all units that qualify for Article 7-C coverage.

(3) Where a building, structure or portion thereof meets the criteria of MDL §§ 281(1), and 281(2), [or] 281(4), or 281(5), [of the Multiple Dwelling Law] and these [regulations] rules, thereby qualifying as an IMD building, it must be registered with the Loft Board. A decrease in the number of [residentially occupied] residential units in a

building [which] that qualifies for coverage pursuant to MDL §[§] 281[(1) and 281(2)] to fewer than three (or two, as permitted in accordance with the terms and provisions set forth in MDL § 281(5) and these rules) after the applicable time period required for residential occupancy pursuant to MDL § 281, [December 1, 1981] will not be the basis for exemption from [IMD] Article 7-C coverage. In such instances, the owner, landlord or agent of the building, structure or portion thereof shall be required to obtain a residential certificate of occupancy, unless the building is duly converted into a non-residential building in accordance with the terms and provisions of the MDL, these rules and all applicable law. However, the discontinuance of residential occupancy after December 1, 1981, but prior to May 1, 1987, of a unit which qualifies for coverage under Article 7-C solely by reason of MDL § 281(4) will result in such unit being exempt from [IMD] Article 7-C coverage. Solely with respect to such instances, the [Remaining] remaining residentially occupied units, limited to units in existence during the qualifying period of occupancy, set forth in MDL § 281(1)(iii) or 281(4) [of the Multiple Dwelling Law], as further delineated in § 2-08(c) of these [regulations] rules, and accreted units as defined in MDL § 281(3) [of the Multiple Dwelling Law] and § 2-08(g)(1) of these [regulations] rules, shall be entitled to the protections of Article 7-C, including the legalization requirements of MDL § 284(1) [of the Multiple Dwelling Law].

(h) *Non-covered units [in an IMD].*

(1) Any building that does not meet the statutory requirements set forth in MDL § 281, as further detailed in these rules, is not covered by Article 7-C. [Any space in an IMD which was not previously occupied residentially on or before June 21, 1982, and is subsequently converted to residential use, is not covered by Article 7-C, and the owner of such space must obtain a residential certificate of occupancy before permitting the commencement of such occupancy.]

(2) Notwithstanding the foregoing, if [that] a building qualifies as an IMD,

(i) any residential unit first occupied residentially on or after April 1, 1981, is not covered under Article 7-C, unless such unit meets the criteria qualifying for an IMD pursuant to MDL § 281(5), as set forth in § 2-08(a)(4)(iii). Any residential unit first occupied residentially on or after January 2, 2009 is not covered under Article 7-C.

(ii) any unit that meets the criteria qualifying for an IMD pursuant to MDL § 281 is not covered under Article 7-C if: (a) the owner, lessee or agent failed to register the building as an IMD; or (b) a residential occupant failed to file an application for coverage as an IMD in accordance with the terms and provisions of these rules on or before the date listed in § 1-06.1(a) and on the Loft Board website, which constitutes 6 months after the Loft Board shall have adopted all rules necessary in order to implement the provisions of the chapter of the laws of 2010 which added MDL § 281(5).

Occupants of any [such] non-covered unit are not entitled to the protections of Article 7-C. Residential occupancy of such unit shall not be permitted unless a final residential certificate of occupancy is obtained for the unit.

(i) *De facto multiple dwellings.*

Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof judicially determined to be a *de facto* multiple dwelling, which otherwise meets the criteria for an IMD, as set forth in MDL § 281 [of the Multiple Dwelling Law] and these [regulations] rules. Such prior judicial determination will not be the basis for exemption from Article 7-C coverage.

(j) [Reserved] **Use Group Rule**

\* Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §§ 11-27, 11-28, 15-021(c), 15-021(d), 15-215, 41-141, 42-111D(1)(f), 111-201(a) and 111-201(b); as of April 7, 1983. As well as other sections that have been or will be adopted in the future.

\*\* Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to § 74-782; as of April 7, 1983. As well as other sections that have been or will be adopted in the future.

\*\*\* A “family” is either a person occupying a dwelling and maintaining a household with not more than four borders, roomers or lodgers or two or more persons occupying a dwelling, living together and maintaining a common household with not more than four borders, roomers or lodgers. See MDL § 4(5).

Statement of Basis and Purpose:

Pursuant to § 282 of Article 7-C of the MDL (“Loft Law”), the Loft Board may promulgate rules to ensure compliance with the Loft Law. Effective as of June 21, 2010, the Legislature amended the Loft Law by enacting Chapter 135 and 147 of the Laws of 2010, which, among other things, added §§ 281(5) and 282-a. Section 281(5) expands the window period under which residential units may qualify for coverage as interim multiple dwellings (“IMDs”) under the Loft Law. This section also provides certain restrictions that buildings must satisfy in order to qualify for protection under the Loft Law. Section 282-a provides a statute of limitations for the filing of a coverage application.

The proposed amendment details the criteria a residential unit must satisfy in order to be deemed an “IMD” unit pursuant to the newly added Loft Law sections, including § 281(5). The proposed amendment also permits a residential unit that satisfies such criteria to attach to an existing IMD building as an “accreted unit.” It also clarifies which residential units are excluded from coverage under the amended Loft Law. Finally, the proposed amendment reorganizes the provisions of § 2-08 into a more unified and cohesive section.

Dated: \_\_\_\_\_, 2010