

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Amendments to Rules Governing the 421-a Extended Affordability Program

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by Sections 1043 and 1802 of the New York City Charter and Section 421-a of the New York State Real Property Tax Law, HPD is adopting amendments to Chapter 49 of Title 28 of the Rules of the City of New York.

A notice of proposed rulemaking was published in the City Record on February 14, 2018. A public hearing was held on March 20, 2018.

Statement of Basis and Purpose

New York State Real Property Tax Law § 421-a provides real property tax exemptions for eligible, new multiple dwellings. HPD determines eligibility for § 421-a real property tax exemptions. Chapter 49 of Title 28 of the Rules of the City of New York (the "421-a Extended Affordability Program Rules") was adopted in 2016 to implement Subdivision 17 of Real Property Tax Law §421-a.

Subdivision 17 provides a 50% exemption from real property taxes for either 10 or 15 years. This benefit is available to multiple dwellings that began construction prior to July 1, 2008, and were granted either 25 or 20 years of § 421-a benefits prior to June 15, 2015, for making at least 20% of their dwelling units affordable to income-eligible persons or families. Those properties that had been granted 25 years of benefit are eligible for the 50% exemption for a period of 10 years from the end of the original 25-year period; those that had been granted 20 years of benefit are eligible for the 50% exemption for a period of 15 years from the end of the original 20-year period. To get this additional property tax exemption benefit, all residential tax lots in such multiple dwellings must be operated as rental housing. They also must maintain the original affordable units at the levels of affordability required for their original § 421-a 20 or 25 years of benefits (typically 80% of Area Median Income (“AMI”)), and must restrict an additional 5% of their dwelling units to be affordable to individuals or families whose household income is at or below 130% of AMI.

Subdivision 17 provides that HPD may establish requirements for monitoring compliance with the statutory affordability requirements. HPD established such requirements in Chapter 49 of Title 28 of the Rules of the City of New York, including a provision for a “Marketing Monitor” that would be responsible for monitoring compliance with the Extended Affordability Program requirements relating to the leasing, subleasing, and occupancy of Affordable Housing Units. This amendment to the definition of “Marketing Monitor” in the 421-a Extended Affordability Program Rules eliminates the payment requirement and authorizes the use of in-house as well as third-party marketing monitors. This amendment is being adopted because many projects use in-house marketing agents, and the amendment conforms the Extended Affordability Program Rules to the recently adopted HPD rules for the Affordable New York Housing Program under Subdivision 16 of Real Property Tax Law §421-a. The amendment also clarifies HPD’s practices concerning the marketing guidelines by which Affordable Housing Units must be leased and the verification of eligibility for tenancy of Affordable Housing Units. Furthermore,

since these rules were originally adopted, HPD has created a form for the Monitoring Contract that can be executed and submitted with the application.

The adopted rule amendments also clarify other language in the existing rules to more precisely reflect HPD practices.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter and section 421-a of the Real Property Tax Law.

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The definition of “Hotel” in Section 49-01 of Chapter 49 of Title 28 of the Rules of the City of New York is reorganized to appear in alphabetical order and amended to read as follows:

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

§ 2. The definition of “Housing Connect” in Section 49-01 of Chapter 49 of Title 28 of the Rules of the City of New York is reorganized to appear in alphabetical order and amended to read as follows:

Housing Connect. “Housing Connect” means the New York City Housing Connect lottery system or any successor program administered by the Agency to market vacant affordable dwelling units.

§ 3. The definition of “Marketing Monitor” in Section 49-01 of Chapter 49 of Title 28 of the Rules of the City of New York is amended to read as follows:

Marketing Monitor. "Marketing Monitor" means an organization approved by the Agency and retained [and paid for] by the applicant to monitor compliance with the requirements, established by the Act and this chapter, relating to the leasing, subleasing and occupancy of Affordable Housing Units, including, but not limited to, ensuring that each Affordable Housing Unit is leased at a rent not exceeding the Permitted Rent and is occupied by a household approved by the Agency whose income at the time of initial occupancy of such Affordable Housing Unit is not

more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act. Such Marketing Monitor may be an in-house department of the applicant, a subsidiary or affiliate of the applicant, or a third-party marketing, leasing, managing, or monitoring administering agent.

§ 4. Paragraph (3) of Subdivision (c) of Section 49-02 of Chapter 49 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) [A proposed] An executed Monitoring Contract; and

§ 5. Subdivision (c) of Section 49-03 of Chapter 49 of Title 28 of the Rules of the City of New York is amended to read as follows:

c. An Affordable Housing Unit shall be leased, both upon initial rent-up and upon any subsequent vacancy, pursuant to such marketing [requirements] guidelines as may be [established] published by the Agency.

§ 6. Subdivision (f) of Section 49-03 of Chapter 49 of Title 28 of the Rules of the City of New York is amended to read as follows:

f. [Each tenancy] No lease for an Affordable Housing Unit [shall be approved by] can be executed until the Agency [prior to execution of the lease] verifies the eligibility of the proposed tenants.

Commissioner Maria Torres-Springer
April 3, 2018