

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Sections 1043 and 1802 of the City Charter, and Section 421-a of the Real Property Tax Law, the Department of Housing Preservation and Development is adopting amendments to Chapter 6 of Title 28 of the Rules of the City of New York (the "421-a Rules").

A notice of proposed rulemaking was published in the City Record on October 12, 2017.

A public hearing was held on November 13, 2017. Written comments regarding the rules were received in accordance with the notice published in the City Record or electronically through NYC RULES at www.nyc.gov/nycrules. Comments were made available to the public within a reasonable time after the hearing at Room No. 5-K2, 5th Floor, 100 Gold Street, between 10:00 am and 4:00 pm on weekdays.

Statement of Basis and Purpose

New York State Real Property Tax Law ("RPTL") Section 421-a provides real property tax exemptions for eligible, new multiple dwellings. Chapter 59 of the Laws of 2017 renamed this tax exemption benefit program the "Affordable New York Housing Program." HPD determines eligibility for real property tax exemptions granted pursuant to RPTL Section 421-a. HPD is proposing amendments to Chapter 6 of Title 28 of the Rules of the City of New York to restrict the type of affordable units that can qualify a building for tax exemption benefits pursuant to RPTL Section 421-a.

The 421-a tax exemption program was originally implemented by the State Legislature in 1971 to stimulate the development of an abundance of undeveloped lots that existed in New York City at the time. Under the City Council's then-existing authority to restrict, limit or condition the eligibility, scope or amount of 421-a benefits, the Council created the Geographic Exclusion Area in 1984. In this designated section of Manhattan, which was expanded in subsequent years by both State and local law to include a much larger area of the City, projects have to provide affordability either onsite or purchase negotiable certificates from offsite affordable units in order to receive the 421-a tax exemption benefit.

HPD's original rule addressing the affordability requirements in the Geographic Exclusion Area prohibited affordable units created to satisfy the 421-a requirements from receiving any other as-of-right or discretionary government benefit, consideration or assistance. The only exceptions the original rule provided for were tax exempt financing, federal low income housing tax credits and real property tax exemption benefits. In 2007, HPD authorized an additional exception to this governmental assistance prohibition. That additional exception allowed affordable units created to satisfy the requirements of the Inclusionary Housing Program established under the New York City Zoning Resolution to also be used to qualify a multiple dwelling in the Geographic Exclusion Area for 421-a tax exemption benefits **if** at least 20% of the dwelling units in such multiple dwelling were affordable to persons of "low and moderate income," as defined in Section 6-01(c) of Chapter 6 of Title 28 of the Rules of the City of New York.

The 2007 rule amendment was intended to allow affordable inclusionary housing units to qualify a multiple dwelling for 421-a tax exemption benefits. However, it was not intended to authorize such a tax exemption on top of the profits such a multiple dwelling would garner from selling any zoning bonus generated by such affordable units to another building.

This amendment is therefore in keeping with the evolution of the purpose of 421-a as amended over time by the New York State Legislature and New York City Council – from a program intended to stimulate residential development generally to a program intended to generate affordable housing. The rule amendment would prohibit affordable inclusionary housing units generating zoning bonuses for multiple dwellings on different zoning lots from qualifying a multiple dwelling in the Geographic Exclusion Area that commenced construction on or before December 31, 2015 for 421-a benefits. This restriction would not apply if the affordable inclusionary housing units are in a development involving several zoning lots reviewed and approved as a single unit pursuant to the Zoning Resolution. This is consistent with the general approach to such developments, which, subject to site plan approval, allow for the distribution of floor area and dwelling units irrespective of zoning lot boundaries within the development.

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. Paragraph (5) of subdivision (n) of Section 6-08 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(5) Notwithstanding anything to the contrary contained in this subdivision, affordable units created to satisfy the requirements of the inclusionary housing program established pursuant to the New York City Zoning Resolution may be used to qualify a multiple dwelling in the geographic exclusion area for the benefits of the Act [if] provided that (i) at least twenty percent (20%) of the units contained in the multiple dwelling applying for such benefits are affordable to persons of low and moderate income as defined by this chapter, and (ii) such affordable units only generate floor area compensation for a compensated development on either (a) the same zoning lot as such affordable units, or (b) within a development site on which such affordable units are located where such development site involves several zoning lots that were reviewed and approved as a single unit pursuant to the New York City Zoning Resolution. For purposes of this paragraph (5), “floor area compensation” and “compensated development” shall have the meanings set forth in Section 23-911 of the New York City Zoning Resolution.

Commissioner Maria Torres-Springer
November 29, 2017