

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (“HPD”) proposes an amendment to Chapter 49 of Title 28 of the Rules of the City of New York to clarify language in the existing 421-a Extended Affordability Program rules and revise the definition of “Marketing Monitor” to authorize the use of in-house as well as third-party monitors.

When and where is the hearing? HPD will hold a public hearing on the proposed rule. The public hearing will take place from 11:00 AM to 12:30 PM on Tuesday, March 20, 2018. The hearing will be in HPD’s offices at 100 Gold Street, 9th Floor, Room 9-P10, New York, New York 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HPD through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@hpd.nyc.gov.
- **Mail.** You can mail comments to Meilan Chiu, Director of Operations and Policy Analysis, 100 Gold Street, Room 9-Z2, New York, New York 10038.
- **Fax.** You can fax comments to HPD, 212-863-7156, ATTN: Meilan Chiu.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 863-6494. You can also sign up in the hearing room before the hearing begins on March 20, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be submitted on or before March 20, 2018.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 863-6494 or e-mail at chium@hpd.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by March 13, 2018.

This location has the following accessibility option(s) available: The building and hearing room are wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and an audiotape of oral comments concerning the proposed rules will be available

to the public at 421-a Customer Service Conference Room No. 8-C09, 8th Floor, 100 Gold Street, between 10:00 am – 4:00 pm on weekdays.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law authorize HPD to make these proposed rules. The proposed rule was included in HPD's regulatory agenda.

Where can I find the HPD rules? The HPD rules are in Title 28 of the Rules of the City of New York.

What rules govern the rulemaking process? HPD must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

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 last year 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. HPD is proposing an amendment to the definition of "Marketing Monitor" in the 421-a Extended Affordability Program Rules that would eliminate the payment requirement and authorize the use of in-house as well as third-party marketing monitors. This amendment is being proposed because many projects use in-house marketing agents, and the amendment would conform 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 would also clarify 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 proposed rule amendments would 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:

[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:

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:

[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
February 14, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of 421-a Extended Affordability Program Rules

REFERENCE NUMBER: HPD - 47

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- i. Is understandable and written in plain language for the discrete regulated community or communities;
- ii. Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- iii. Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Norma Ponce
Mayor's Office of Operations

Date: October 26, 2017

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of 421-a Extended Affordability Program Rules

REFERENCE NUMBER: 2017 RG 095

RULEMAKING AGENCY: Department of Housing Preservation & Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 26, 2017