

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 to add a new Chapter 51 to Title 28 of the Rules of the City of New York to implement the Affordable New York Housing Program adopted by the State Legislature in Chapter 20 of the Laws of 2015 and amended by Chapter 59 of the Laws of 2017. The Affordable New York Housing Program provides a tax exemption similar to the prior Real Property Tax Law Section 421-a exemption for buildings that commenced construction after December 31, 2015.

When and where is the Hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place from 11:30 AM to 1:00 PM on Monday, July 17, 2017. The hearing will be in HPD's offices at 100 Gold Street, 9th Floor, Room 9-V6, New York, New York 10038.

The location has the following accessibility options available: the building and hearing room are wheelchair accessible.

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 Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@hpd.nyc.gov.
- **Mail.** You can mail written comments to Elaine R. Toribio, TIP Director, 100 Gold Street, Room 8-D09, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, 212 863-5899, ATTN: Elaine R. Toribio.
- **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) 863-7698. You can also sign up in the hearing room before the hearing begins on July 17, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be submitted before the close of business on July 17, 2017.

What if I need assistance to participate in the Hearing? If you need a sign language interpreter or other reasonable accommodation of a disability at the Hearing, you must tell us no later than July 3, 2017 by email at accessibility@hpd.nyc.gov, by telephone at 212-863-7698, or by mail at the address given above.

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 the 421-a Customer Service Conference Room No. 8-CO9, 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 located 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. 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 New York State Real Property Tax Law §421-a. HPD is proposing a new Chapter 51 of Title 28 of the Rules of the City of New York (to be titled the "Affordable New York Housing Program Rules") to implement Subdivision 16 of Real Property Tax Law §421-a.

Subdivision 16 of Real Property Tax Law §421-a provides eligible rental projects with a 100% exemption from real property taxation for a maximum of three years of construction and either thirty-five or twenty-five years after completion. Eligible rental projects with three hundred or more dwelling units that meet the minimum average hourly wage requirements for construction workers are eligible for thirty-five years of a 100% exemption from real property taxation after completion. Other eligible rental projects can receive a 100% exemption from real property taxation for the first twenty-five years after completion and an exemption equal to the affordability percentage (ratio of affordable units to total dwelling units in an eligible site) for the final ten years of this tax exemption benefit. This tax exemption benefit is available to rental multiple dwellings containing six or more dwelling units that commenced construction after December 31, 2015, and on or before June 15, 2022, provided construction is completed on or before June 15, 2026.

There also is a more limited twenty-year tax exemption benefit available to cooperatives or condominiums outside Manhattan with no more than thirty-five units and in which all of the units have an average assessed valuation value not to exceed \$65,000 upon the first assessment following completion (Affordability Option D). Both rental and homeownership buildings that commenced construction prior to December 31, 2015, and that have not yet received 421-a benefits according to their property tax bill may opt to comply with this program.

To receive the tax exemption benefit under the Affordable New York Housing Program, a rental project that is not required to meet the minimum average hourly wage requirements must elect one of the available affordability options provided in the statute: Affordability Option A, B, or C, each of which demands a requisite affordability percentage ranging from 25 to 30 of all of the dwelling units at prescribed levels of Area Median Income ("AMI"), ranging from 40% to 130% of AMI. Rental projects in designated enhanced affordability areas (portions of Manhattan, Brooklyn and Queens) that are required to meet the construction workers minimum average

hourly wage requirements or those that choose to do so must elect other affordability options in the statute – Affordability Option E, F, or G, each of which also demand a requisite affordability percentage ranging from 25% to 30% of all of the dwelling units at prescribed levels ranging from 40% to 130% AMI. Eligible rental projects receiving the enhanced thirty-five year benefits are also subject to an extended restriction period of forty years from completion whereas all other projects would only be subject to a restriction period of thirty-five years.

Applicants may not apply for this tax exemption benefit until construction is completed, though the construction period benefit is retroactive. All Affordable Housing Units must be rent stabilized and Market Units below the vacancy decontrol threshold also must be rent stabilized. Building service employees must receive prevailing wages unless their building meets the prescribed exceptions to this requirement.

The proposed rules:

- Provide that no application for benefits can be filed before the Completion Date.
- Require the non-refundable filing fee to be submitted with the application for benefits.
- Establish the documentation applicants must submit with their applications for the Affordable New York Housing Program Benefits, including:
 - 1) Evidence satisfactory to HPD that the applicant has recorded a restrictive declaration identifying each Affordable Housing Unit, including its AMI limit and number of bedrooms, which units in such property have been set aside for occupancy by persons with disabilities in accordance with Section 504 of the Rehabilitation Act, and requiring that the rents of such units shall be set in accordance with these rules. This restrictive declaration must also provide that all of the Affordable Housing Units must, for the Restriction Period or the Extended Restriction Period, as applicable, be rented to eligible tenants at or below the rent ceiling established by such rules and be subject to rent stabilization.
 - 2) A proposed Monitoring Contract with an approved marketing monitor.
 - 3) A copy of a Notice of Intent to begin marketing the Affordable Housing Units through the New York City Housing Connect lottery system, as well as satisfactory evidence that such Notice of Intent was filed with HPD at least nine months prior to the Completion Date so that marketing can commence no earlier than seven months prior to the Completion Date.
 - 4) A licensed architect or professional engineer's affidavit that, among other things, calculates Floor Area for purposes of determining the limitations on benefits for non-residential space.
- Establish the rent and income restrictions that apply to the Affordable Housing Units during the Restriction Period or the Extended Restriction Period, as applicable.
- Require the tenants of Affordable Housing Units be offered either a one or two year rent stabilized lease, at their option.
- Prohibit Affordable Housing Units from being operated as a hotel or rented to corporations, partnerships or other entities.
- Establish that in any story containing one or more Affordable Housing Units not less than 30% of the dwelling units on such story must be Market Units, but authorizes HPD to waive this requirement if the Affordable Housing Units comprise more than 50% of the units in the Eligible Multiple Dwelling.
- Establish that every building segment in an Eligible Multiple Dwelling must contain one or more Affordable Housing Units.

- Establish that all rental dwelling units, including Affordable Housing Units, must share common areas.

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 title of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

TAX EXEMPTION PURSUANT TO SECTION 421-A(1) THROUGH SECTION 421-A(15) OF THE REAL PROPERTY TAX LAW AND SECTIONS 11-245, 11-245.1 and 11.245.1-b¹ OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

THIS CHAPTER COVERS APPLICATIONS FOR TAX EXEMPTION PURSUANT TO SECTION 421-A OF THE REAL PROPERTY TAX LAW BY MULTIPLE DWELLINGS THAT (1) COMMENCE CONSTRUCTION ON OR BEFORE JUNE 15, 2015, (2) COMMENCE CONSTRUCTION AFTER JUNE 15, 2015 AND ON OR BEFORE DECEMBER 31, 2015 THAT RECEIVE THEIR FIRST TEMPORARY OR PERMANENT CERTIFICATE OF OCCUPANCY COVERING ALL RESIDENTIAL AREAS ON OR BEFORE DECEMBER 31, 2019, AND (3) FOR EITHER (1) OR (2) ABOVE, DO NOT MAKE AN ELECTION PURSUANT TO REAL PROPERTY TAX LAW SECTION 421-A(16)(r).

FOR ALL OTHER APPLICATIONS FOR TAX EXEMPTION FOR NEW CONSTRUCTION OR ELIGIBLE CONVERSION PURSUANT TO SECTION 421-A OF THE REAL PROPERTY TAX LAW, SEE CHAPTER 51 OF THIS TITLE.

FOR APPLICATIONS FOR EXTENDED BENEFIT TAX EXEMPTION PURSUANT TO SECTION 421-A(17) OF THE REAL PROPERTY TAX LAW, SEE CHAPTER 49 OF THIS TITLE.

Section 2. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 51 to read as follows:

Chapter 51
AFFORDABLE NEW YORK HOUSING PROGRAM RULES AND
ELIGIBILITY REQUIREMENTS PURSUANT TO REAL PROPERTY TAX LAW
SECTION 421-A(16)

¹ New York City Administrative Code Section 11-245.1-b was effective from December 28, 2007, to December 28, 2010.

§ 51-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means subdivision sixteen of section four hundred-twenty-one-a of the real property tax law, as amended.

Aggregate Floor Area of Eligible Site. "Aggregate Floor Area of Eligible Site" means the sum of the Floor Area in the Eligible Site.

Aggregate Floor Area of Ineligible Space in the Eligible Site. "Aggregate Floor Area of Ineligible Space in the Eligible Site" means the sum of the Floor Area of Ineligible Space in the Eligible Site.

Area Median Income. "Area Median Income" means the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

Building Segment. "Building Segment" shall have the meaning set forth in Section 12-10 of the Zoning Resolution.

Commercial Space. "Commercial Space" means any space within an Eligible Multiple Dwelling that is devoted to commercial, community facility, or other non-residential use.

Common Area. "Common Area" means any space within an Eligible Multiple Dwelling to which the residents of two or more rental dwelling units have access without paying a usage fee and that is not located in a rental dwelling unit, in a Commercial Space or in a Service Area.

Department of Finance. "Department of Finance" means the Department of Finance of the City of New York or any successor agency or department thereto.

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 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.

Housing Connect. "Housing Connect" means the New York City Housing Connect lottery system administered by the Agency to market vacant Affordable Housing Units.

Ineligible Space. "Ineligible Space" means commercial, community facility, and accessory use space, other than parking which is located not more than twenty-three feet above the curb level.

Legal Rent. "Legal Rent" means the maximum rent permitted under Rent Stabilization; provided, however, that no exemption or exclusion from any requirement of Rent Stabilization shall be applied to any Affordable Housing Unit during the Restriction Period or Extended Restriction Period, as applicable, 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 the vacancy of an Affordable Housing Unit where the rent exceeds a prescribed maximum amount, the fact that tenant income and/or unit rent exceed prescribed maximum amounts, the nature of the tenant, or any other factor.

Marketing Monitor. "Marketing Monitor" means an organization approved by the Agency and retained by the applicant for Affordable New York Housing Program Benefits 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 thirty-party marketing, leasing, managing, or monitoring administering agent.

Monitoring Contract. "Monitoring Contract" means a contract between the applicant and the Marketing Monitor that is approved in form and substance by the Agency and that:

(i) requires the fee owner to provide monthly rent rolls to the Marketing Monitor and to notify the Marketing Monitor no fewer than seven business days after an Affordable Housing Unit becomes vacant;

(ii) requires the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Restriction Period or Extended Restriction Period, as applicable, (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs, (b) is promptly marketed pursuant to such requirements as are established by the Agency, (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Housing Unit and that has been approved by the Agency prior to execution of a lease, (d) is not offered to or rented by a corporation, partnership or other entity, and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and

(iii) requires the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Eligible Multiple Dwelling to the Agency.

Multiple Dwelling Law. "Multiple Dwelling Law" means the Multiple Dwelling Law of the State of New York.

Notice of Intent. "Notice of Intent" means a notice of intent to begin marketing the Affordable Housing Units through Housing Connect no earlier than seven months prior to the Completion Date and that, in addition to any other documentation required in the Notice of Intent, includes as exhibits: (i) the affordability option elected pursuant to the Act, (ii) the unit mix proposed to satisfy subparagraph (ii) of paragraph (g) of the Act or, in accordance with such subparagraph, the claimed exemption from such unit mix requirements, and (iii) the unit distribution proposed to satisfy subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter.

Permitted Rent. "Permitted Rent" means a rent for any lease or lease renewal at any time during the Restriction Period or Extended Restriction Period, as applicable, that does not exceed the lesser of (i) thirty percent of the applicable Area Median Income, minus the amount of any applicable Utility Allowance, provided, however, that solely for purposes of establishing the initial rent for each Affordable Housing Unit, the Area Median Income in effect as of the earlier to occur of the (A) date of any regulatory agreement between the fee owner and the Agency, or (B) date of filing of the Notice of Intent, shall be utilized, or (ii) the Legal Rent.

Service Area. "Service Area" means any space within an Eligible Multiple Dwelling that is utilized by the owner or manager of such Eligible Multiple Dwelling and their respective employees for purposes of building administration and to which residential tenants do not normally have access.

Story. "Story" shall have the meaning set forth in Section 12-10 of the Zoning Resolution.

Utility Allowance. "Utility Allowance" means an allowance established by the Agency for the payment of utilities where the tenant of an Affordable Housing Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Zoning Resolution. "Zoning Resolution" means the Zoning Resolution of the City of New York, as amended.

§ 51-02 Application Procedure and Documentation.

a. No application for 421-a Benefits shall be filed with respect to any Eligible Multiple Dwelling before the Completion Date of such Eligible Multiple Dwelling.

b. No affordability election can be changed after the filing of a Notice of Intent and no unit mix or unit distribution proposed in such Notice of Intent can be changed after it has been approved by the Agency.

c. The application must be submitted with the non-refundable filing fee established by the Act.

d. Each application for 421-a Benefits shall include:

- (1) Evidence satisfactory to the Agency that a restrictive declaration in a form satisfactory to the Agency (A) has been executed by the fee owner and any ground lessee of the Eligible Multiple Dwelling, (B) has been recorded against the real property containing the Eligible Multiple Dwelling, (C) identifies each Affordable Housing Unit in the Eligible Multiple Dwelling, the number of bedrooms in such Affordable Housing Unit, whether such Affordable Housing Unit is an Affordable Housing Forty Percent Unit, Affordable Housing Sixty Percent Unit, Affordable Housing Seventy Percent Unit, Affordable Housing One Hundred Twenty Percent Unit, or Affordable Housing One Hundred Thirty Percent Unit, and provides that the rents to be charged to the tenants of each such Affordable Housing Unit shall be established pursuant to this chapter, (D) identifies the dwelling units in such Eligible Multiple Dwelling that have been set aside for occupancy by persons with disabilities in accordance with Section 504

of the Rehabilitation Act, (E) provides that the Affordable Housing Units in such Eligible Multiple Dwelling shall for the Restriction Period or the Extended Restriction Period, as applicable, be (i) rented to eligible tenants at or below the Permitted Rent, and (ii) subject to Rent Stabilization, allowing tenants holding a lease and in occupancy at the expiration of such Restriction Period or Extended Restriction Period, as applicable, to continue to be protected by Rent Stabilization for the duration of their occupancy, and (F) provides that such Eligible Multiple Dwelling must comply with all of the requirements for Affordable New York Housing Program Benefits during the Restriction Period or the Extended Restriction Period, as applicable.

- (2) Unless the Agency waives this requirement in accordance with Section 51-06(c) of this chapter, satisfactory evidence that the Notice of Intent to begin marketing was filed with the Agency no later than nine months prior to the Completion Date.
- (3) Proof that prior to the Completion Date, the Agency determined that (i) an Eligible Site will meet the unit mix requirements established pursuant to subparagraph (ii) of paragraph (g) of the Act or, in accordance with such subparagraph, is exempt from such unit mix requirements, and (ii) an Eligible Multiple Dwelling will meet the distribution requirements established pursuant to subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter.
- (4) A proposed Monitoring Contract.
- (5) An affidavit from a registered architect or professional engineer licensed to practice and in good standing with the New York State Department of Education that, among other things, calculates the Aggregate Floor Area of the Eligible Site and the Aggregate Floor Area of Ineligible Space in the Eligible Site.

§ 51-03 Distribution Requirements.

a. If a Story contains one or more Affordable Housing Units, not less than thirty percent of the dwelling units on such Story shall be Market Units, provided, however, that the Agency may waive such requirement where the Affordable Housing Units comprise more than fifty percent of the units in an Eligible Multiple Dwelling;

b. Every Building Segment in an Eligible Multiple Dwelling must contain one or more Affordable Housing Units; and

c. All Common Areas in an Eligible Multiple Dwelling shall be open and accessible to the residents of all of the rental dwelling units in such Eligible Multiple Dwelling, including the residents of any Affordable Housing Units.

§ 51-04 Rent and Income. During the Restriction Period:

a. The rent for an Affordable Housing Unit shall not exceed the Permitted Rent.

b. Each Affordable Housing Unit shall be occupied by a household whose income at the time that such household initially occupies 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.

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

d. No Affordable Housing Unit shall be held off the market for a period that is longer than is reasonably necessary;

e. No Affordable Housing Unit shall be offered to a corporation, partnership or other entity;

f. No lease for an Affordable Housing Unit can be executed until the Agency verifies the eligibility of the proposed tenants; and

g. Each tenant of an Affordable Housing Unit shall be offered a rent stabilized lease for a term of either one or two years, at such tenant's option.

§ 51-05 Hotel Prohibition. No Eligible Multiple Dwelling that is operated as a Hotel shall be eligible for Affordable New York Housing Program Benefits.

§ 51-06 Election Eligibility. For purposes of paragraph (r) of the Act:

a. Whether a Rental Project or Homeownership Project has received benefits pursuant to section four hundred twenty-one-a of the real property tax law shall be determined by whether a property tax bill quarterly statement issued for such Rental Project or Homeownership Project by the Department of Finance indicates such benefits.

b. Except with respect to dwelling units that will be rented through referrals from the City for homeless households who meet the applicable income requirements and other eligibility criteria permitted by the Agency's marketing guidelines, any Rental Project or Homeownership Project receiving benefits pursuant to section four hundred twenty-one-a of the real property tax law shall not be allowed to change the affordability designation of any dwelling units for which the Agency commenced processing households for occupancy on or before the date upon which such Rental Project or Homeownership Project elected to receive benefits pursuant to paragraph (r) of the Act.

c. The Agency may waive the rule regarding the deadline by which to file a Notice of Intent if such waiver is appropriate based upon the Completion Date of any Rental Project that elects to receive Affordable New York Housing Program Benefits.

Commissioner Maria Torres-Springer
June 13, 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: Implementation of Affordable New York Housing Program

REFERENCE NUMBER: 2017 RG 041

RULEMAKING AGENCY: Department of Housing Preservation and 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

Date: May 25, 2017

Acting Corporation Counsel

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: Implementation of Affordable New York Housing Program

REFERENCE NUMBER: HPD-40

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/ Jennifer J. Baek

Mayor's Office of Operations

May 25, 2017

Date