

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** HPD is proposing amendments to Chapter 41 of Title 28 of the Rules of the City of New York (the "Inclusionary Housing Rules") to limit the zoning bonus generated by 421-a affordable units to usage on the same zoning lot as the building containing the 421-a affordable units.

**When and where is the Hearing?** HPD will hold a public hearing on the proposed rule. The public hearing will take place from 10:30 AM to 11:30 AM on Monday, August 7, 2017. The hearing will be in HPD's offices at 100 Gold Street, 5th Floor, Room 5-L1, New York, New York 10038.

**The location has the following accessibility option(s) 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 website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [rules@hpd.nyc.gov](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail written comments to Associate Commissioner Louise Carroll, Department of Housing Preservation and Development, 100 Gold Street, Room 5-G3, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, (212) 863-8242, ATTN: Louise Carroll.
- **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) 863-6838. You can also sign up in the hearing room before the hearing begins on August 7, 2017. 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 August 7, 2017.

**Do you 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 25, 2017 either by email at [Bartolinij@hpd.nyc.gov](mailto:Bartolinij@hpd.nyc.gov), by telephone at (212) 863-6838, 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 Room No. 5-K2, 5th Floor, 100 Gold Street, between 10:00 am and 4:00 pm on weekdays.

**What authorizes HPD to make this rule?** Sections 1043 and 1802 of the City Charter and Sec-

tions 23-96(k) of the Zoning Resolution authorize HPD to make these proposed rules.

**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 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

The proposed rule amendments prohibit newly constructed affordable housing units built to satisfy the requirements for tax exemption benefits pursuant to Real Property Tax Law Section 421-a(16) from generating floor area bonus for buildings other than buildings on the same zoning lot containing such affordable housing units. Zoning Resolution Section 23-911, which governs the inclusionary housing program, authorizes HPD to establish additional criteria for New Construction Affordable Housing through guidelines. The City Planning Commission Report from this 2009 text amendment provides that “[t]he availability of a range of options under the program – including on-site and off-site; new construction, substantial rehabilitation, and preservation; and rental and homeownership units – serves to encourage the broadest possible participation in the Inclusionary Housing program, while a range of tax incentives and housing subsidies strongly encourage affordable units to be located on-site.”

When the 2009 text amendments were adopted, it was with the understanding that 421-a and voluntary inclusionary housing would work together both to encourage on-site affordability and to ensure that new developments participating in the inclusionary housing program would generate affordable housing units that would not otherwise have been constructed. The changes to the 421-a program that took effect on April 10, 2017 undermine both of these assumptions.

First, most condominium developments will not be eligible for the new 421-a program and will therefore not be subject to its on-site affordability requirements; therefore when condominium developments want to obtain a zoning bonus for a larger building, they are unlikely to generate floor area by constructing on-site affordable units. Instead, for the reasons stated below, they will likely purchase zoning bonus generated by off-site rental affordable units from buildings participating in the new 421-a program. This proposed rule would avoid this scenario.

Second, while inclusionary housing bonus can only be used in designated areas, the bonus floor area can be generated anywhere in the same community district as the receiving site or in an adjacent community district within a half mile of the receiving site. Rental buildings located anywhere in the City are eligible for the new 421-a program and must provide affordable units on the same zoning lot which can be used to generate off-site inclusionary bonus. This increased supply of affordable units, while welcome, will likely generate a glut of floor area bonus that will drive down the purchase price of off-site bonus. For condominium developments participating in the inclusionary housing program, this glut of low cost floor area bonus will diminish both the incentive to build affordable units on-site, and the ability of the program to generate affordable units off-site that otherwise would not have been constructed in the absence of the inclusionary housing requirements (i.e., they would already have been produced under the requirements of the new 421-a program).

These unintended effects of the new 421-a program undermine the assumptions about the interaction between tax incentives and inclusionary housing that provided the foundation for the adoption of the 2009 text amendments and ultimately threaten the fundamental purpose of the inclusionary housing program – to create and support newly constructed affordable housing.

The proposed rule amendments restore the validity of these assumptions. By limiting the zoning bonus that can be generated by such 421-a affordable units to usage on the same zoning lot, buildings that require more floor area will have to provide on-site affordable housing units or off-site affordable housing beyond that already required by the new 421-a program.

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. Section 41-01 of Chapter 41 of Title 28 of the Rules of the City of New York is amended by adding two new definitions to be inserted in alphabetical order and to read as follows:**

"Assisted Affordable Unit" shall have the meaning set forth for "Affordable Housing Unit" in Section 421-a(16)(a)(xv) of the Real Property Tax Law.

"Eligible Site" shall have the meaning set forth in Section 421-a(16)(a)(xxix) of the Real Property Tax Law.

**§ 2. Chapter 41 of Title 28 of the Rules of the City of New York is amended by adding a new Section 41-25 to read as follows:**

Section 41-25. Limitations on Generation of Floor Area Compensation. For New Construction Affordable Housing, Assisted Affordable Units shall not generate any Floor Area Compensation for any Compensated Development other than the Eligible Site on which such Assisted Affordable Units are located.

NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
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**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Limitation of Zoning Bonuses Generated by 421-a Affordable Units

**REFERENCE NUMBER:** 2017 RG 054

**RULEMAKING AGENCY:** The 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  
Acting Corporation Counsel

Date: June 21, 2017

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

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Limitation of Zoning Bonuses Generated by 421-a Affordable Units**

**REFERENCE NUMBER: HPD-42**

**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/ Francisco X. Navarro

June 21, 2017

Mayor's Office of Operations

Date