

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”) is proposing an amendment to Chapter 6 of Title 28 of the Rules of the City of New York regarding eligibility for Real Property Tax Law Section 421-a tax exemption benefits for certain projects that commenced construction on or before December 31, 2015.

When and where is the hearing? HPD will hold a public hearing on the proposed rule. The public hearing will take place from 11:30 AM to 1:00 PM on Monday, November 13, 2017. 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 Elaine R. Toribio, TIP Director, City of New York Department of Housing Preservation and Development, 100 Gold Street, Room 8-D09, New York, New York 10038.
- **Fax.** You can fax comments to HPD, (212) 863- 5899, ATTN: Elaine R. Toribio.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule 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 November 13, 2017. You can speak for up to three minutes.

Is there a deadline to submit comments? All written comments must be submitted on or before November 13, 2017.

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) 863-7698 or email at accessibility@hpd.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 30, 2017.

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 rule will be available to

the public at the 421-a Customer Service Conference Room No. 8-C09, 8th Floor, 100 Gold Street, between 10:00 A.M. and 4:00 P.M. 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 this proposed rule.

Where can I find the HPD rules? The HPD rules are located in Title 28 of the Rules of the City of New York. The proposed rule amendment was included in HPD's 2016-2017 Regulatory Agenda.

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

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 proposed 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.

HPD's authority for these rules is found in Sections 1043 and 1802 of the New York City Charter and RPTL Section 421-a.

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
October 12, 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: Eligibility for 421-a Tax Exemption Benefits

REFERENCE NUMBER: 2017 RG 080

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
Acting Corporation Counsel

Date: September 14, 2017

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: Eligibility for 421-a Tax Exemption Benefits

REFERENCE NUMBER: HPD-45

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
Mayor's Office of Operations

September 14, 2017
Date