

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 amendments to chapter 50 of title 28 of the Rules of the City of New York to implement changes to the prevailing wage requirements for building service employees in buildings receiving tax benefits under New York State Real Property Tax Law section 421-a (the “421-a Statute”) enacted by Chapter 20 of the Laws of 2015. HPD’s proposed rule amendment to chapter 50 will amend the rules to reflect the Comptroller’s enforcement authority under subdivision 17 of the 421-a Statute.

When and where is the Hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place from 11:00 AM to 12:30 PM on Tuesday, January 23, 2017. The hearing will be in HPD’s offices at 100 Gold Street, 9th Floor, Room 9-P10, 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.
- **Hearing.** You can speak at the public 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 January 23, 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 January 23, 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 January 12, 2017 either 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 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 rules were 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 of the City Charter.

Statement of Basis and Purpose

Section 421-a of the Real Property Tax Law (RPTL) provides real property tax exemptions for eligible new multiple dwellings. In New York City, HPD determines eligibility for these exemptions and is responsible for ensuring that applicants for the exemption comply with eligibility requirements, including the requirement that the applicant's building service employees receive a prevailing wage.

Chapter 20 of the Laws of 2015, which took effect on June 15, 2015, adopted a new extended benefit available to multiple dwellings that commenced construction prior to July 1, 2008, and that had been granted either 25 or 20 years of Section 421-a benefits prior to June 15, 2015, for making at least 20% of their dwelling units affordable to persons or families of low income. This extended benefit, provided in subdivision 17 of RPTL Section 421-a, authorizes a 50% exemption from real property taxation for either an additional 10 or 15 years. Those properties that had been granted 25 years of benefit are eligible for an additional 10 years; those that had been granted 20 years of benefit are eligible for an additional 15 years. To get this additional benefit, all residential tax lots in such multiple dwellings must be operated as rentals. They also must maintain the affordability of the original affordable units at the levels originally required (typically 80% of Area Median Income ("AMI")), as well as restricting an additional 5% of their dwelling units to be affordable to individuals or families whose household income is at or below 130% of AMI.

The extended benefit starts on the later of either the expiration date for the original Section 421-a real property tax exemption or the date on which a restrictive declaration is recorded against the property. Buildings that receive the extended benefit must pay prevailing wages to building service employees while they are receiving the extended benefit unless (a) they contain less than 30 units, or (b) all of the dwelling units are affordable housing units and at least 50%, upon initial rental and subsequent rentals following a vacancy, are affordable to and restricted to occupancy by individuals or families at or below 125% of AMI.

The fiscal officer, which, in New York City, is the Comptroller, is also the designated enforcement authority over the building service employees' prevailing wage requirements for buildings receiving Section 421-a (17) extended benefits. HPD's proposed amendment to chapter 50 will amend the rules to reflect the Comptroller's enforcement authority under subdivision 17 of the 421-a Statute. 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. The first paragraph of Section 50-01 of Chapter 50 of Title 28 of the Rules of the City of New York is amended, and a new definition of “Extended Affordability Act” is added in alphabetical order, to read as follows:

Definitions: As used in this chapter, the following terms shall have the following meanings. Capitalized terms that are not specifically defined in this chapter shall have the meanings set forth in the Act (with respect to properties receiving benefits pursuant to such act), the New 421-a Act (with respect to properties receiving benefits pursuant to such act), the Extended Affordability Act (with respect to properties receiving benefits pursuant to such act), or [in] the Minimum Average Hourly Wage Act, as relevant.

Extended Affordability Act. “Extended Affordability Act” shall mean paragraph (g) of subdivision 17 of Section 421-a of the Real Property Tax Law.

Section 2. Section 50-06 of Chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 50-06 Agency Determination of Prevailing Wage Exemption. An Applicant who requests a determination of exemption from the Prevailing Wage Requirement pursuant to the Act, [or] the New 421-a Act, or the Extended Affordability Act, as applicable, must submit all of the documentation necessary to prove that:

(a) with respect to a multiple dwelling that is not receiving benefits pursuant to [subdivision] subdivisions sixteen or seventeen of Real Property Tax Law § 421-a, at least fifty percent of the dwelling units in such Applicant’s building are 125% Units, including, but not limited to, (i) with respect to a multiple dwelling owned and operated as a rental, the initial rents for such 125% Units, the income certifications for the initial occupants of such 125% Units, and proof that the building is required to maintain such 125% Units during the entire period of Post-Construction Benefits, and, (ii) with respect to 125% Units in a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the initial unit sale prices and the income certifications for all of the initial purchasers of such 125% Units; [or]

(b) with respect to an Eligible Multiple Dwelling that is receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, all of the dwelling units in such Eligible Multiple Dwelling are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Restriction Period or the Extended Restriction Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Eligible Multiple Dwelling is required to maintain such Affordable Housing Units and 125% Units during the entire Restriction Period or Extended Restriction Period, as applicable; or

(c) with respect to an Extended Affordability Property that is receiving benefits pursuant to subdivision seventeen of Real Property Tax Law § 421-a, all of the dwelling units in such Extended Affordability Property are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Extended Affordability Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Extended Affordability Property is required to maintain such Affordable Housing Units and 125% Units during the entire Extended Affordability Period.

Commissioner Maria Torres-Springer
December 19, 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: Amendment of Prevailing Wage Requirements for Building Service Workers in Buildings Receiving 421-a Tax Benefits

REFERENCE NUMBER: HPD- 48

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/ Guenevere Knowles
Mayor's Office of Operations

Date: November 28, 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 Prevailing Wage Requirements for Building Service Workers in Buildings Receiving 421-a Tax Benefits

REFERENCE NUMBER: 2017 RG 103

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: November 28, 2017