NOTICE OF PUBLIC HEARING

Subject: Notice of Opportunity to Comment on Proposed Amendments to Rules governing tax exemptions under §421-a of the Real Property Tax Law of the State of New York.

Date/Time: Friday, June 21, 2013

1:00 – 4:00 PM

Location: Department of Housing Preservation and Development

100 Gold Street

9th Floor, Room 9-P10

New York, N.Y. 10038

Contact: Elaine R. Toribio

TIP Director

100 Gold Street

Room 3-Z1

New York, N.Y. 10038

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Proposed Rule Amendment

Under the authority vested in the Commissioner of the Department of Housing Preservation and Development by §1802 of the New York City Charter and Section 421-a of the Real Property Tax Law ("421-a Program"), and in accordance with the requirements of §1043 of the New York City Charter, the Department of Housing Preservation and Development intends to promulgate amended rules for the 421-a Program. The proposed rule amendments were included in HPD's 2012-13 Regulatory Agenda.

Instructions

- Prior to the hearing, you may submit written comments about the proposed rule to Ms. Toribio by mail or electronically through NYC RULES at www.nyc.gov/nycrules by June 21, 2014.

- If you wish to testify at the hearing, please notify Ms. Toribio by June 21, 2014.

- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Ms. Toribio by June 10, 2014.

- Written comments and an audiotape of oral comments received at the hearing will be available after June 21, 2014 at the office of Ms. Toribio.

Statement of Basis and Purpose of Proposed Rule

Real Property Tax Law §421-a provides a real property tax exemption for new multiple dwellings. HPD determines eligibility for §421-a real property tax exemptions. HPD is proposing amendments to Chapter 6 of Title 28 of the Rules of the City of New York (the "421-a Rules") in order to implement recent amendments to the New York City Zoning Resolution and State law. The proposed amendments also reflect programmatic changes in the requirements for the marketing of affordable units constructed to qualify or extend tax exemption benefits for a new multiple dwelling.

Tax Exemption for Accessory Parking

Real Property Tax Law §421-a limits the exemption available for nonresidential space in new multiple dwellings to 12% of the aggregate floor area of commercial, community facility and accessory use space ("12% Cap"). If the nonresidential space exceeds the 12% Cap, the §421-a tax exemption is reduced accordingly. Accessory parking used by residents that is located up to 23 feet above the curb level does not count toward the 12% Cap and is therefore fully exempt from taxation under §421-a. The City Planning Commission has amended Zoning Resolution §13-21 to expand the use of accessory off-street parking spaces in the Manhattan Core from residents to the public at large. The proposed rule amendments would amend the definition of "Floor area of commercial, community facilities and accessory use space" to reflect this Zoning Resolution amendment and thereby exclude from the 12% Cap accessory off-street parking spaces in the Manhattan Core that will also be available to the public. Such parking will therefore be eligible for the full §421-a real property tax exemption.

Extending Deadline for Exemption from Affordability and AV Cap

Under §421-a, a Preliminary Certificate of Eligibility entitles a project to a full real property tax exemption for up to three years of construction, and a Final Certificate of Eligibility entitles a project to between 10-25 years of post-completion exemption benefits that are phased out over the benefit period. Preliminary Certificate of Eligibility applications must be filed after the commencement of construction but prior to completion.

- The Geographic Exclusion Area is a residential zone in the City where both the State legislature and the City Council have determined that there is no need for a tax break to incentivize the construction of housing. In the Geographic Exclusion Area, §421-a benefits are not as-of-right and projects must meet certain affordability requirements in order to receive the §421-a tax exemption ("Affordability Requirements"). If projects in the Geographic Exclusion Area provide affordable units offsite instead of onsite, they may still only receive §421-a benefits for a portion of an apartment's billable exempt assessed value ("AV Cap) depending upon when the project commenced and completed construction and the date of the written agreement for the construction of offsite affordable units. If the AV Cap applies, the value of the unit above this threshold is fully taxable. The AV Cap applies outside the Geographic Exclusion Area as well to any project that does not receive extended §421-a benefits.

- Chapter 4 of the Laws of 2013 extended the deadline for filing Preliminary Certificate of Eligibility applications from May 14, 2012, to June 24, 2012, for projects that are seeking exemption from the Affordability Requirements and/or the AV Cap. These projects will not be required to meet the Affordability Requirements and/or the AV Cap if they complete construction within 72 months or are entitled to an extension of the 72-month period due to such factors as extraordinary size and complexity, strikes or labor stoppages, industry-wide shortages of construction materials, substantial damage or mortgage foreclosure proceedings.
- Projects that are the subject of mortgage foreclosure or other lien enforcement proceedings on or before June 24, 2012, in the Geographic Exclusion Area also will be entitled to these completion parameters in accordance with Chapter 4 of 2013; if met, they, too will not have to meet the Affordability Requirements and/or the AV Cap. The proposed rule amendments reflect this month-long filing extension.

Elimination of FAR 15 Prohibition for Certain Projects

The City Council enacted a prohibition against granting §421-a benefits in the highest density midtown and downtown zoning districts in 1984 ("FAR 15 Prohibition") in order to guard Manhattan's remaining manufacturing areas against residential encroachment. In 1993, with the continuing decline in manufacturing in Manhattan, the City Council lifted the FAR 15 Prohibition. The City Council continued to exempt projects from the FAR 15 Prohibition until December 31, 2007. Chapter 4 of the Laws of 2013 lifts the FAR 15 Prohibition for specified projects that meet certain conditions specified in the law. The proposed rule amendment reflects these additional exceptions to the FAR 15 Prohibition.

Marketing of Affordable Units

- The proposed rule amendments provide that HPD or another governmental entity must market the affordable units in projects seeking extended 421-a benefits outside of the Geographic Exclusion Area.
- Inside the Geographic Exclusion Area, the proposed rule amendments provide that HPD also will market those affordable units that are constructed without any governmental assistance.
- The proposed rule amendments clarify the requirements for owners' affidavits submitted with the Final Certificate of Eligibility application for projects within the Geographic Exclusion Area. Even projects marketed by HPD must provide this affidavit.
- Where affordable units are constructed with governmental assistance from sources other than HPD, the proposed rule amendments provide that owners are obligated to notify such governmental entities of the requirement that residents of the community board be granted priority for the purchase or rental of 50% of the affordable units, unless preempted by federal requirements.
- All such affidavits must also provide that the community preference requirement will be met upon initial occupancy or that it is preempted by federal requirements specified in the affidavits themselves.

"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.

New material in the following rule is underlined, deleted material is in [brackets].
Section 1. The definition of "Floor area of commercial, community facility and accessory use space" contained in subdivision (c) of Section 6-01 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

Floor area of commercial, community facilities, and accessory use space. "Floor area of commercial, community facilities, and accessory use space" shall mean the gross horizontal areas of all the floors or any portion thereof of a multiple dwelling or dwellings and accessory structures or spaces on a lot measured from the exterior faces of exterior walls of commercial or community facilities or accessory uses as such uses are defined in the Zoning Resolution; (See Article 1, Chapter 2). Notwithstanding the foregoing, accessory use space shall not include (a) parking areas which are not part of the building such as uncovered outdoor parking areas and open space beneath a building (including access roads) [shall not be considered accessory use space. Provided that,] , (b) for properties for which a final certificate of eligibility is issued on or after November 3, 1995, [accessory use space shall not include] accessory parking space located not more than twenty-three feet above the curb level, (c) for properties for which a final certificate of eligibility is issued on or after May 8, 2013, accessory off-street parking spaces located not more than twenty-three feet above the curb level which (i) are located in the Manhattan Core, as defined in Section 12-10 of the Zoning Resolution, and (ii) meet the requirements of Section 13-21 of the Zoning Resolution.

§ 2. Paragraph (7) of subdivision (c) of Section 6-02 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(7) Any multiple dwelling, or portion thereof, the construction of which commenced on or after November twenty-ninth, nineteen hundred eighty-five and which is located within any district in the county of New York where a maximum base floor area ratio, as that term is defined in the Zoning Resolution, of fifteen or greater was permitted as of right by provisions of such resolution in effect on April fourteenth, nineteen hundred eighty-two; provided, however, that this rule shall [no longer] not be applicable to the extent to which such [local law] restriction is modified or repealed by State or local law.

§ 3. Paragraph (1) of subdivision (d) of Section 6-05 of Chapter 6 of Title 28 of the Rules of the City of New York is amended by adding a new subparagraph (x) to read as follows:

(x) For applications received for any projects that commence construction on or after the effective date of the amendment that added this subparagraph, an affidavit from the owner certifying that all units that are affordable to persons of low and moderate income that qualify buildings outside of the geographic exclusion area for a twenty-five year exemption will be marketed by the Department pursuant to a fair and open process in accordance with the Department's marketing guidelines or will be marketed in accordance with the marketing guidelines of another federal, state or local agency or instrumentality that provided substantial governmental assistance for the construction of such units.

§ 4. The definition of "commence" contained in subdivision (a) of section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

Commence. "Commence" shall mean:

(a)(1) the later to occur of (i) the date upon which a new metal or concrete structure to be incorporated into the multiple dwelling that shall perform a load bearing function for such multiple dwelling is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department; or

(2) if a project includes new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, the later to occur of (i) the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure begins; or (ii) the date upon which an alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department;

(b) provided, however, that (1) with respect to subparagraph (1) of paragraph (a), if piles or caissons are required, "commence" shall mean the later to occur of (i) the date upon which at least one fully driven pile or caisson is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department; and

(2) with respect to both subparagraphs (1) and (2) of paragraph (a):

(i) such installation of a new metal or concrete structure or such beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, and such issuance of a building or alteration permit, must both have occurred in order for the multiple dwelling to meet this definition of "commence"; and

(ii) for multibuilding projects, each multiple dwelling in such multibuilding project shall be deemed to "commence" (A) with respect to subparagraph (1) of paragraph (a), on the later to occur of (1) the date upon which a new metal or concrete structure to be incorporated into the first multiple dwelling in such multibuilding project that shall perform a load bearing function for such multiple dwelling is installed; or (2) the date upon which a building or alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and (B) with respect to subparagraph (2) of paragraph (a), on the later to occur of (1) the date upon which the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project begins; or (2) the date upon which an alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and

(iii) if the architectural and structural plans approved by the Department of Buildings in conjunction with the issuance of the first such building or alteration permit are thereafter amended to provide for more than a thirty-five percent (35%) increase (the "35% standard") in the floor area of such multiple dwelling as defined pursuant to the Act, the construction of such multiple dwelling shall be deemed to have commenced on the date upon which such amended plans are filed with such department, provided, however, that, in the case of a multibuilding project that meets the requirements of clause (ii) of this paragraph (2), any such increase in the floor area may be distributed amongst the multiple dwellings in such multibuilding project in any manner permitted under the Zoning Resolution and the 35% standard may be applied to such multibuilding project on an aggregate rather than a single building basis; and

(iv) the construction of any such multiple dwelling also must be completed without undue delay. For purposes of this definition of "commence,":

(1) for any application for a Preliminary Certificate of Eligibility that is filed no later than [three hundred sixty-five days from the effective date of this amendment] June 24, 2012, or that is filed with respect to a project that was the subject of mortgage foreclosure proceedings or other lien enforcement litigation by a lender on or before [three hundred sixty-five days from the effective date of this amendment] June 24, 2012: (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within seventy-two (72) months from the later to occur of (1) the date of the installation of a new metal or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within seventy-two (72) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay. Where construction is not completed within such seventy-two (72) month period and an architect or professional engineer has certified that such construction was completed without undue delay, the Department will not merely rely on such certification. In order to determine whether such construction was, in fact, completed without undue delay, the Department will consider the following factors: (i) the extraordinary size and/or complexity of the construction project; (ii) strikes or other unavoidable labor stoppages of substantial duration and severity; (iii) industry-wide shortages of construction materials of substantial duration and severity; (iv) substantial damage to completed construction work caused by fire or other casualty, and (v) mortgage foreclosure proceedings or other lien enforcement litigation by a lender with regard to such project. In each case, the Department will consider such factors and determine whether construction could reasonably have been completed in a materially shorter period of time.

(2) for any application for a Preliminary Certificate of Eligibility that is filed [more than three hundred sixty-five days after the effective date of this amendment] after June 24, 2012, and that is not filed with respect to a project that was the subject of mortgage foreclosure proceedings or other lien enforcement litigation by a lender on or before [three hundred sixty-five days from the effective date of this amendment] June 24, 2012: (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of

Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay.

(3) Notwithstanding anything to the contrary contained herein, if a multiple dwelling meets the affordability requirement or is located outside of the GEA, such multiple dwelling shall be deemed to have been completed without undue delay.

§ 5. Subparagraph (i) of paragraph (1) of subdivision (b) of Section 6-09 of the Rules of the City of New York is amended to read as follows:

(i) not less than twenty percent of the onsite units in such multiple dwelling are GEA 60% AMI units marketed by the Department pursuant to a fair and open process in accordance with the Department's marketing guidelines; or

§ 6. Subparagraph (iii) of paragraph (3) of subdivision (b) of Section 6-09 of the Rules of the City of New York is amended to read as follows:

(iii) when filing an application for a Final Certificate of Eligibility pursuant to §6-05(d) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units [and unless the dwelling units in such multiple dwelling are marketed under the Department's monitoring], submit an affidavit from the owner containing such information as the Department may require to certify that such units will be marketed pursuant to a fair and open process in accordance with the [Department's] marketing guidelines of the Department or of another federal, state or local agency or instrumentality, and that [either] (A) if the units will be marketed in accordance with the marketing guidelines of another federal, state or local agency or instrumentality, the owner has informed such agency or instrumentality of the requirement that residents of the community board where the multiple dwelling for which benefits are being granted pursuant to the Act is located shall, upon initial occupancy, have priority for the purchase or rental of 50% of the GEA 60% AMI units or 50% of the GEA SGA units, respectively, [or] unless the community priority requirement is preempted by federal requirements, and (B) either (1) residents of the community board where the multiple dwelling for which benefits are being granted pursuant to the Act is located shall, upon initial occupancy, have priority for the purchase or rental of 50% of the GEA 60% AMI units or 50% of the GEA SGA units, respectively, or (2) such multiple dwelling does not have to comply with such community priority requirement because the community priority requirement is preempted by federal requirements that such owner has specified in such affidavit.

Commissioner Mathew M. Wambua
May 16, 2013

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment of 421-a Program Rules

REFERENCE NUMBER: 2013 RG 20

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: April 25, 2013

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 Program Rules**

REFERENCE NUMBER: **HPD-10**

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/ Hunter Gradie
Mayor's Office of Operations

April 25, 2013
Date