

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) pursuant to Section 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law, and in accordance with Section 1043 of the City Charter, HPD is adopting amendments to chapter 51 of title 28 of the Rules of the City of New York revising certain requirements for buildings applying for tax benefits under New York State Real Property Tax Law section 421-a(16).

A notice of proposed rulemaking was published in the City Record on September 16, 2019. A public hearing was held on October 29, 2019.

Statement of Basis and Purpose

Section 421-a(16) of the Real Property Tax Law (RPTL) was enacted by the State Legislature in Chapter 20 of the Laws of 2015, as further amended by Chapter 59 of the Laws of 2017. RPTL Section 421-a(16) 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.

HPD's rule amendments (1) modify the Application requirements for Homeownership Projects, (2) change the deadlines for filing a Workbook, (3) eliminate the Notice of Intent filing deadline and instead require proof of filing in the Application, (4) cap rents of Affordable Housing Units at the rents for comparably-sized Market Units, (5) prohibit the deduction of the Utility Allowance from the Permitted Rent unless it is deducted from all of the Affordable Housing Units in such Eligible Site, (6) authorize HPD to waive the Application filing fee for certain projects and (7) ensure that Buildings are not configured in a manner that impedes the statutory and regulatory requirements for the integration of Affordable Housing Units and their residents with the rest of the Building.

HPD's rule amendments modify the Application requirements for Homeownership Projects. Currently, Offering Plans and Purchase Contracts for Homeownership Projects must include the necessary disclosures regarding the Building Size Requirement, Primary Residence Requirement and Post-Completion Assessment Cap Requirement. However, since every unit must be sold before a Homeownership Project can apply for benefits, the sponsor is no longer involved in the development and the Offering Plan is no longer relevant. To address this situation, the rule amendments require each purchaser of a unit in a Homeownership Project to authorize an officer of the board to submit the Application and to execute and record the 421-a(16) restrictive declaration on their behalf. Executed consent forms for each unit in a Homeownership Project must be submitted with the Application along with executed and recorded deeds for each unit, and such deeds are also required to include the Primary Residence Requirement. This consent form must also include the homeowner's acknowledgement of the Primary Residence Requirement, the Building Size Requirement and the Post-Completion Assessment Cap Requirement.

The rule amendments also modify the deadlines for the submission by Rental Projects of the Workbook, which includes the proposed unit mix and unit distribution information along with the

selected affordability option, and the Notice of Intent to begin marketing Affordable Housing Units through Housing Connect. Currently, the Notice of Intent, to which the Workbook is an attachment, must be filed no later than nine months prior to the Completion Date, and there is a limited waiver available. However, to allow more flexibility and to account for different marketing challenges based upon project size, the rule amendments provide for three different Workbook filing windows as follows:

1. **Small Projects** (up to 19 Affordable Housing Units): workbooks shall be submitted no earlier than 9 months before the completion of construction and no later than 2 months after the completion of construction.
2. **Large Projects** (20 - 99 Affordable Housing Units): workbooks shall be submitted no earlier than 12 months before the completion of construction and no later than 2 months after the completion of construction.
3. **Extra-large Projects** (100 or more Affordable Housing Units): workbooks shall be submitted no earlier than 15 months before the completion of construction and no later than 2 months after the completion of construction.

This wider window for Workbook filings also eliminates the need for the filing deadline waiver provisions. A Rental Project still would be best served by filing its Workbook at the earliest date in such window so that the Affordable Housing Units can be leased up and occupied immediately at completion. Since Housing Connect will not accept the Notice of Intent to begin marketing the Affordable Units without an approved Workbook, the rule amendments eliminate a Notice of Intent filing deadline and instead require proof of Notice of Intent filing as part of the Application.

The rule amendments also allow post-approval changes to the information provided in the Workbook until the time that the Notice of Intent is filed. However, consistent with current practices, the Utility Allowance and the Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area included in the first Workbook submitted will govern the Permitted Rents for the Affordable Housing Units and cannot be changed.

The rule amendments also change the "Permitted Rent" definition to add an additional cap equaling that of the rents charged for any comparably-sized Market Units in the same Eligible Site. This additional cap only applies to projects that have not had their Workbooks approved before the effective date of these amendments. The definition of "Permitted Rent" also now provides that the Utility Allowance can be deducted either for all of the Affordable Housing Units or for none of the Affordable Housing Units in an Eligible Site, in order to ensure that such payments are uniform for all tenants and to eliminate the need for two sets of rent schedules – one deducting the Utility Allowance and the other not deducting the Utility Allowance – for Affordable Housing Units in the same Eligible Site. The rule amendments also authorize HPD to waive the Application filing fee for Rental Projects in which all of the units, other than a legally required onsite superintendent's unit, are Affordable Housing Units developed with governmental assistance pursuant to a program for the development of affordable housing. The rule amendments prescribe factors for consideration of such a waiver, such as whether a fee for Affordable New York Housing Program Benefits under RPTL § 421-a(1-15) already has been paid.

Finally, the rule amendments provide that every Building Segment must contain the same or similar proportion of Affordable Housing Units to Market Units. They also make clear that when a single building is comprised of two or more residential condominium units containing two or

more rental dwelling units, it must still comply with the statutory and regulatory requirements for common entrances, common areas and non-isolation of affordable units just as if the residential condominium units were one Eligible Multiple Dwelling. They also provide that HPD may disapprove any building configuration that frustrates the intent and purpose of these provisions.

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 51-01 of chapter 51 of title 28 of the Rules of the City of New York is amended by deleting the definitions of “Offering Plan” and “Purchase Contract,” by amending the definitions of “Notice of Intent” and “Permitted Rent,” and by adding new definitions for “Board Authorization and Consent Form,” “Building,” “Deed,” “Residential Condominium Unit” and “Workbook” in alphabetical order to read as follows:

Board Authorization and Consent Form. “Board Authorization and Consent Form” means a form executed by the owner of a unit in a Homeownership Project that (i) authorizes an officer of the board for said Homeownership Project to file an Application on behalf of such Homeownership Project, (ii) authorizes such board officer to execute and record the restrictive declaration required pursuant to section 51-02(d)(1) of this chapter on behalf of such unit owner and (iii) contains the unit owner’s acknowledgement of the Primary Residence Requirement, the Building Size Requirement and the Post-Completion Assessment Cap Requirement.

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

Deed. “Deed” means an executed and recorded deed that contains the Primary Residence Requirement for a dwelling unit in a Homeownership Project.

Notice of Intent. “Notice of Intent” means a notice of intent to begin marketing the Affordable Housing Units through Housing Connect [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].

[Offering Plan. “Offering Plan” means a plan governing the offering and sale of condominium or cooperative units in a Homeownership Project that (i) complies with Article 23-A of the General Business Law (“Martin Act”), the Act and this chapter, and (ii) discloses the Building Size Requirement, Primary Residence Requirement and Post-Completion Assessment Cap Requirement.]

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) the Legal Rent, or
- (ii) either

(1) for Affordable Housing Units in an Eligible Multiple Dwelling that is not subject to a HAP Contract[.];

(A) with respect to any Eligible Site for which the Agency has not issued an approval of the Workbook on or before the effective date of the amendment to this definition of "Permitted Rent," the rent for any Market Unit of comparable bedroom size in the same Eligible Site, or

(B) thirty percent of the applicable percentage of Area Median Income, minus the amount of any applicable Utility Allowance, provided, however, that no deduction of the Utility Allowance from the Permitted Rent shall be authorized for any Affordable Housing Unit in an Eligible Site unless the Utility Allowance shall be deducted from all of the Affordable Housing Units in such Eligible Site, and provided further that solely for purposes of establishing the initial rent for each Affordable Housing Unit, if there is a regulatory agreement between the fee owner and a federal, state or local agency or instrumentality governing such Affordable Housing Unit that was executed prior to the date of filing of the Workbook, 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 a federal, state or local agency or instrumentality, or (B) date of filing of the Notice of Intent, shall be utilized] in the rent schedule to such regulatory agreement and the Utility Allowance in effect on such regulatory agreement execution date shall be utilized, or

(2) for Affordable Housing Units in an Eligible Multiple Dwelling that is subject to a HAP Contract and only during the term of such HAP Contract, 120% of the Contract Rents for such Affordable Housing Units, provided, however, that such rents, less any Section 8 rent subsidies, do not exceed the lesser of:

- (A) thirty percent of the applicable percentage of Area Median Income minus the applicable Utility Allowance, or
- (B) the tenant's maximum payment under the HAP Contract.

[Purchase Contract. "Purchase Contract" means a contract to purchase a dwelling unit in a Homeownership Project that contains the Building Size Requirement, the Primary Residence Requirement and the Post-Completion Assessment Cap Requirement.]

Residential Condominium Unit. "Residential Condominium Unit" means two or more rental dwelling units collectively held in a condominium form of ownership.

Workbook. "Workbook" means the Affordable Housing New York – 421-a(16) – Units Workbook available on the Agency's website that is submitted by the applicant to the Agency and which must provide the requested information about all of the Affordable Housing Units and the Market Units, including, but not limited to, (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.

§ 2. Subdivisions (a-2), (b) and (c) of section 51-02 of chapter 51 of title 28 of the Rules of the City of New York are amended to read as follows:

a-2. No Application shall be filed with respect to any Homeownership Project before (1) the first assessment following the Completion Date, and (2) there are [executed Purchase Contracts] Board Authorization and Consent Forms and Deeds for each unit in such Homeownership Project.

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] The Agency may authorize changes to any information provided in the Workbook after the Agency has provided an initial approval thereof until the Notice of Intent has been filed. Notwithstanding the foregoing, the Agency shall not authorize any changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area after the first Workbook is submitted.

c. The Application must be submitted with the non-refundable filing fee established by the Act; provided, however that the Agency may waive such filing fee for any Application that is submitted on or after January 1, 2019 for a Rental Project in which all of the dwelling units are Affordable Housing Units constructed with the substantial assistance of grants, loans or subsidies provided by a federal, state or local agency or instrumentality pursuant to a program for the development of affordable housing. Any superintendent unit required by the housing maintenance code or multiple dwelling law to be in the Eligible Multiple Dwelling containing such Affordable Housing Units shall not disqualify such Rental Project from the filing fee waiver the Agency may provide pursuant to this subdivision. Factors that the Agency will consider for purposes of any fee waiver determination include whether the applicant has previously paid a filing fee for Affordable New York Housing Program Benefits for the Rental Project.

§ 3. Paragraphs (2), (3) and (6) of subdivision (d) of section 51-02 of chapter 51 of title 28 of the Rules of the City of New York are amended to read as follows:

(2) [Unless the Agency waives this requirement in accordance with Section 51-06(c) of this chapter, satisfactory] Satisfactory evidence that (i) the Workbook was filed:

- (A) for Rental Projects containing up to nineteen Affordable Housing Units, between nine months before the Completion Date and two months after the Completion Date;
- (B) for Rental Projects containing between twenty and ninety-nine Affordable Housing Units, between twelve months before the Completion Date and two months after the Completion Date; or
- (C) for Rental Projects containing one hundred or more Affordable Housing Units, between fifteen months before the Completion Date and two months after the Completion Date;
and

(ii) the Notice of Intent to begin marketing the Affordable Housing Units 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 for Affordable Housing Units 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 for rental dwelling units established pursuant to subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter.

(6) With respect to a Homeownership Project, [each executed Purchase Contract] the Deed and the [Offering Plan] Board Authorization and Consent Form for every unit in such Homeownership Project.

§ 4. Section 51-03 of chapter 51 of title 28 of the Rules of the City of New York is amended to read as follows:

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 either (1) the Affordable Housing Units comprise more than fifty percent of the units in an Eligible Multiple Dwelling, or (2) there is only one dwelling unit on a Story in an Eligible Multiple Dwelling[;].

b. Every Building Segment in an Eligible Multiple Dwelling in a Rental Project must contain one or more Affordable Housing Units[;] and the same or similar proportion of Affordable Housing Units to Market Units in each Building Segment in such Rental Project.

c. All Common Areas in an Eligible Multiple Dwelling in a Rental Project 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.

(d) Notwithstanding any inconsistent provision of this chapter, for the purpose of subparagraph (i) of paragraph (g) of the Act and subdivisions (a) through (c) of this section, a Building comprised of two or more Residential Condominium Units constitutes one Eligible Multiple Dwelling.

(e) The Agency may disapprove any Building configuration that would frustrate the intent and purpose of subparagraph (i) of paragraph (g) of the Act and subdivisions (a) through (c) of this section by segregating Affordable Housing Units or limiting the ability of residents of Affordable Housing Units to access an Eligible Multiple Dwelling's Common Areas.

§ 5. Subdivision (c) of section 51-06 of chapter 51 of title 28 of the Rules of the City of New York is REPEALED.

Commissioner Louise Carroll
January 7, 2021