

## 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 51 of Title 28 of the Rules of the City of New York for buildings applying for tax benefits under New York State Real Property Tax Law (RPTL) Section 421-a(16).

**When and where is the Hearing?** HPD will hold a public hearing on the proposed rules online. The public hearing will take place from 11:00 AM to 12:00 PM on Tuesday, May 3, 2022. To participate in the public hearing, enter the Webex URL:  
<https://nychpd.webex.com/nychpd/j.php?MTID=m0f648305ee8a204c7db65b6d6c7619dd>  
If prompted to provide a password or number, please enter the following:

Meeting Number: 2335060507498

Password: 421a16\_Rule

You may also join the hearing via device audio or dial-in via phone.

To join by video system:

Dial [23356057498@webex.com](mailto:23356057498@webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

To dial-in via phone, please use the following dial in number and participant code:

Phone Number: +1-646-992-2010

Access Code: 2335 605 7498

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

**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](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail written comments to John Leonard, Executive Director of Tax Incentives, 100 Gold Street, Room 8D-09, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, (212) 863-7156, ATTN: John Leonard.
- **By Speaking at the 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) 863-8540 or by emailing HPD at [421a\\_customerservice@hpd.nyc.gov](mailto:421a_customerservice@hpd.nyc.gov) by May 2, 2022 at 5:00 PM. For

those who do not sign up in advance, there will be an opportunity during the hearing to indicate that you would like to provide comments, but we request that you sign-up in advance. 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 May 3, 2022.

**What if I need assistance to participate in the Hearing?** You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at [421a\\_customerservice@hpd.nyc.gov](mailto:421a_customerservice@hpd.nyc.gov). You may also tell us by telephone at (212) 863-8540. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by April 25, 2022.

This hearing has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access for persons with vision impairments.

**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.

**What authorizes HPD to make this rule?** Sections 1043 and 1802 of the City Charter and Section 421-a of the RPTL 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(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.

This proposed rule clarifies the meaning of the terms “Dwelling Unit” and “Ineligible Space” as they are used in connection with eligibility for 421-a(16) benefits.

The rule would clarify that class A rooming units located in facilities licensed by the New York State Department of Health as Adult Care Facilities and Assisted Living Residences and operated as Enriched Housing Programs are permanent housing eligible for the benefits of the program.

The rule further clarifies that all licensed assisted living units, both with and without full kitchens, would be eligible for benefits under the law to the same extent as other permanent housing.

Because these units are effectively permanent housing for their occupants, their treatment under this proposed rule is consistent with Section 421-a(16). For example, the statute expressly prohibits hotels from receiving these benefits (see RPTL Section 421-a(16)(b)), making clear that the benefits are intended for permanent housing, such as assisted living units in such facilities.

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 definition of “Ineligible Space” in section 51-01 of chapter 51 of title 28 of the Rules of the City of New York is amended, and a new definition of “Dwelling Unit” is added to such section, in alphabetical order, to read as follows:

Dwelling Unit. “Dwelling Unit” means one or more living rooms, arranged to be occupied as a unit separate from all other rooms within a dwelling, with lawful sanitary facilities and a lawful kitchen or kitchenette for the exclusive use of the family residing in such unit, except that for the purposes of this chapter such term shall include class A rooming units in a facility that is licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program.

Ineligible Space. “Ineligible Space” means commercial, community facility, and accessory use space, other than parking which is located not more than twenty-three feet above the

curb level. For the purposes of this chapter, Dwelling Units in a facility that is licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program shall not be considered Ineligible Space.

Commissioner Adolfo Carrion Jr.  
March 25, 2022

**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:** Definition of Certain Terms Relating to Eligibility for 421-a Tax Benefits

**REFERENCE NUMBER:** 2021 RG 093

**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: February 17, 2022

**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: Definition of Certain Terms Relating to Eligibility for 421-a Tax Benefits**

**REFERENCE NUMBER: HPD-84**

**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

February 17, 2022  
Date