

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to Section 485-x of the New York State Real Property Tax Law and in accordance with Sections 1043 and 1802 of the City Charter, the Department of Housing Preservation and Development (HPD) is adopting a new Chapter 63 to Title 28 of the Rules of the City of New York to implement the Affordable Neighborhoods for New Yorkers Tax Incentive program adopted by the New York State Legislature in Chapter 56 of the Laws of 2024.

A notice of proposed rulemaking was published in the City Record on October 3, 2024. A public hearing was held on November 6, 2024.

Commissioner Adolfo Carrion, Jr.

December 16, 2024

Statement of Basis and Purpose

Statutory Background

In 2024, the Legislature amended the New York State Real Property Tax Law (“RPTL”) by adding a new section 485-x to provide exemptions from real property taxes to housing developments that meet certain affordability thresholds. That legislation (the “Act”) created the Affordable Neighborhoods for New Yorkers Tax Incentive program (“ANNY Program Benefits” or the “Program”). ANNY Program Benefits are available to housing created from the construction of new buildings or certain conversions of existing buildings. ANNY Program Benefits are not available to properties that are used as hotels. To receive ANNY Program Benefits, a development must contain six or more dwelling units and construction must have started after June 15, 2022, and on or before June 15, 2034, and be completed on or before June 15, 2038. The Act conferred sole rulemaking authority to HPD with respect to the Program in all areas other than construction wages and prevailing wages, for which the Comptroller also was conferred rulemaking authority.

The amount of the tax exemption granted under the Program varies depending upon the size of the project as well as whether the project is for rental or homeownership units. Depending on these characteristics, developments are placed into categories. Each category has different eligibility requirements to receive ANNY Program Benefits. The categories are:

- **Small Rental Projects:** Small Rental Projects must have more than five and less than eleven residential rental dwelling units and be located outside Manhattan on a zoning lot that permits a residential floor area of no more than 12,500 square feet and maintain at least 50% of those units as permanently rent stabilized. Small Rental Projects that comply with all Program requirements will receive a 100% exemption from real property taxes for the “construction period”, as that term is defined in the Act, and for the first ten years after the construction period.

- **Modest Rental Projects:** Modest Rental Projects must have more than five and less than one hundred residential rental dwelling units. In addition, at least 20% of those units must be permanently rent stabilized “affordable housing units”, as that term is defined in the Act, with no more than three tenant income bands with a weighted average not to exceed 80% of the Area Median Income and no individual income band exceeding 100% of the Area Median Income. Modest Rental Projects that comply with all Program requirements will receive a 100% exemption from real property taxes for the construction period and for the first 25 years after the construction period. For the next ten years after that, a Modest Rental Project will receive a real property tax exemption equal to the “affordability percentage”, which the Act defines as the percentage of total units in the development that meet the affordability criteria.
- **Large Rental Projects:** Large Rental Projects must have at least 100 residential rental dwelling units. In addition, at least 25% of those units must be permanently rent stabilized affordable housing units with no more than three tenant income bands with a weighted average not to exceed 80% of the Area Median Income and no individual income band exceeding 100% of Area Median Income. Large Rental Projects that comply with all Program requirements will receive a 100% exemption from real property taxes for the construction period and for 35 years after the construction period.
- **Very Large Rental Projects:** Very Large Rental Projects must be located in Zone A (which includes Manhattan south of 96th Street, Williamsburg, Greenpoint, and Long Island City) or Zone B (which includes Downtown Brooklyn, DUMBO, Brooklyn Heights, Fort Greene, Clinton Hill, Carroll Gardens, Cobble Hill, Gowanus, Red Hook, Park Slope, Prospect Heights, and Astoria) and have at least 150 residential rental dwelling units. In addition, at least 25% of those units must be permanently rent stabilized affordable housing units with no more than three tenant income bands with a weighted average of 60% of the Area Median Income and no individual income band exceeding 100% of Area Median Income. Very Large Rental Projects in Zone B that comply with all Program requirements will receive a 100% exemption from real property taxes for the construction period and for 40 years after the construction period. Very Large Rental Projects in Zone A that comply with all Program requirements will receive a 100% exemption from real property taxes for the “extended construction period”, as that term is defined in the Act, and a 100% property tax exemption for the first 40 years after the extended construction period. All Very Large Rental Projects are exempt from paying real property taxes on the assessed value of land and improvements in effect during the tax year prior to the date when construction started.
- **Homeownership Projects:** Homeownership Projects must be located outside of Manhattan. 100% of the dwelling units must have an average assessed value per square foot of no more than \$89 upon the first assessment following the completion of the project and each unit owner must agree in writing to maintain the unit as their primary residence for no less than five years from acquisition. Homeownership Projects that comply with all Program requirements are entitled to a 100% exemption from real property taxes for the construction period and for 14 years after the construction period. For the following six years after that, Homeownership Projects will receive a 25% exemption from real property taxes.

In addition to the important affordability requirements described above, the Act imposes numerous other requirements on Program participants. Notable requirements relevant to these Adopted Rules include:

- **Procurements from MWBEs:** All projects must, over the course of their design and construction, make reasonable efforts to spend at least 25% of applicable costs on contracts with minority and women owned business enterprises.
- **Requirements for Restricted Units:** The Act uses the term “restricted unit” to refer to rental dwelling units that are “affordable housing units,” as that term is defined in the Act, or units that are subject to rent stabilization in accordance with Affordability Option C, as defined in the Act. The Act provides that in the event a restricted unit is occupied by an approved tenant and HPD denies the ANNY Program Benefits application or such application is never filed or is withdrawn after filing, such restricted unit must remain rent stabilized until such tenant vacates. In addition, restricted units cannot be rented on a temporary, transient or short-term basis. Each initial lease and lease renewal must be for one or two years, at the option of the tenant. Restricted units cannot be converted to cooperative or condominium ownership.
- **Unit Mix:** All affordable housing units must have a mix of unit sizes (one-bedroom, two-bedroom, etc.) proportional to the mix for market units. Alternatively, at least 50% of the affordable housing units must have two or more bedrooms and no more than 25% can have less than one bedroom.
- **Common Spaces:** All affordable rental dwelling units must share the same common entrances and common areas as rental market units. Affordable housing units cannot be isolated to a particular floor or area.
- **Replacement Ratio:** If the land on which a project is located contained any dwelling units three years prior to the start of construction, the project must provide at least one affordable housing unit (or in the case of Small Rental Projects, one restricted unit) for each dwelling unit that existed three years prior to the start of construction and was thereafter demolished, removed or reconfigured.
- **Concurrent Benefits:** Concurrent exemptions or abatements are prohibited, but projects may voluntarily renounce or terminate ANNY Program Benefits if HPD so authorizes in order to commence a new tax exemption pursuant to either the Private Housing Finance Law or Real Property Tax Law Section 420-c.
- **Program Applications:** Prospective applicants must file a form with HPD stating their intention to apply for ANNY Program Benefits and will be subject to a penalty not to exceed 100% of the application filing fee for failure to do so. Applications must be filed not later than one year after the completion date with a filing fee of (a) \$3,000 per dwelling unit for projects with more than five and less than eleven residential rental dwelling units, (b) \$4,000 per dwelling unit for projects with more than eleven and less than one hundred residential rental dwelling units, (c) \$4,000 per dwelling unit for any Homeownership Project; and (d) \$5,000 per dwelling unit for any project with at least one hundred residential rental dwelling units. The Act authorizes HPD to promulgate rules imposing a lesser fee for governmentally assisted housing and to require a portion of the filing fee to be paid upon the submission of information HPD requires to commence the marketing process for Modest Rental Projects, Large Rental Projects and Very Large Rental Projects.

- **Penalties for Violations:** Finally, HPD has the authority to impose penalties for, among other things, violations of the affordability and rent stabilization requirements on and after the expiration date of the relevant benefit period and to establish the schedule and method of calculation of such fines by rule.

The Adopted Rules

The Adopted Rules address five topics: (i) the form and process of applications for ANNY Program Benefits; (ii) rent and tenant income levels; (iii) the composition of a Program project in terms of the size and location of affordable units and design of common spaces; (iv) provisions pertaining to hotels, motels, and tourist cabins; and (v) penalties. In particular, the Adopted Rules provide as follows:

ANNY Program Benefit Applications

Under the Adopted Rules, applications for ANNY Program Benefits cannot be filed prior to a project's completion date. The Act defines the "completion date" as the date that the Department of Buildings issues the first temporary or permanent certificate of occupancy covering all residential areas of an eligible multiple dwelling, as that term is defined in the Act. There are two exceptions to this rule. First, if an application for a rental project includes two or more eligible multiple dwellings on the same zoning lot, the application deadline is set at one year after the last completion date for such eligible multiple dwellings. However, an applicant could file the application after the completion date of the first such eligible multiple dwelling and subsequently amend the application following the completion date of any other eligible multiple dwelling on the lot. In a project with more than one eligible multiple dwelling, ANNY Program Benefits cannot be granted to such additional buildings and will be revoked for any that already received the benefits unless all such eligible multiple dwellings in such application remain in full compliance with all of the Program eligibility requirements. Second, Homeownership Projects cannot submit an application until after the first assessment following the completion date and board authorization and consent forms and deeds have been filed for each unit in the Homeownership Project.

The Adopted Rules further provide that applicants must file an applicant registration form before they can file an application for ANNY Program Benefits. Failure to comply will result in a penalty fee. All Program applications must include the non-refundable filing fee, provided, however, that a Modest Rental Project, Large Rental Project and Very Large Rental Project must submit 25% of the applicable non-refundable filing fee with its initial workbook submission to HPD. (The workbook is a form that contains all of the information HPD needs to review and approve before it can begin the marketing process for the affordable housing units.)

Finally, the Adopted Rules set forth the documentation applicants must submit to receive ANNY Program Benefits. An application must include:

- 1) Evidence satisfactory to HPD that the applicant has recorded a restrictive declaration for any rental project that identifies each restricted unit in each eligible multiple dwelling, identifies each affordable housing unit in each eligible multiple

dwelling, including its Area Median Income limit and number of bedrooms, and requires that the rents of each such affordable housing unit shall be set in accordance with these Adopted Rules. This restrictive declaration must also provide that all such affordable housing units must be rented to eligible tenants at or below the rent ceiling established by these Adopted Rules and that all such restricted units be rent stabilized. The restrictive declaration for a Homeownership Project must provide the requirements for building size, post-completion square footage assessment cap and primary residency.

- 2) For Modest Rental Projects, Large Rental Projects and Very Large Rental Projects only, an executed monitoring contract with an approved marketing monitor, satisfactory evidence that the workbook was filed within the time periods specified in these Adopted Rules, and proof of the filing of the notice of intent to begin marketing the affordable housing units.
- 3) An affidavit from a licensed architect or professional engineer that, among other things, calculates the floor area for purposes of determining the limitations on benefits for non-residential space.
- 4) For Homeownership Projects, the deed and the board authorization and consent form for every unit in such Project.
- 5) Proof that the project has met the participation goal for minority and women owned business enterprises or made reasonable efforts to do so.

Rent and Tenant Income Levels

The Adopted Rules establish the rent and income restrictions that apply to the affordable housing units during the restriction period (which is defined by the Act as a period commencing on the completion date and extending in perpetuity for rental projects). The Adopted Rules also require that with respect to the initial rent up of the affordable housing units, a Marketing Band for the initial rents shall be established by deducting three percentage points from the applicable Area Median Income, adjusted by unit size and the applicable Utility Allowance. Finally, the Adopted Rules also require that tenants of restricted units be offered either a one- or two-year rent stabilized lease, at their option.

Composition of Program Projects

The Adopted Rules establish that on any story containing one or more affordable housing units, at least 30% of the dwelling units on that story must be market units. The Adopted Rules authorize HPD to waive this requirement if the affordable housing units comprise more than 50% of the dwelling units in the eligible multiple dwelling or where there is only one dwelling unit per story. In addition, every building segment within a Modest Rental Project, Large Rental Project, or Very Large 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 other words, these requirements prohibit confining affordable housing units to one area of an eligible multiple dwelling. Further, all rental dwelling units, including affordable housing units, must share common areas. The Adopted Rules would authorize HPD to disapprove any building configuration that frustrates the intent and purposes of the Act and HPD's rules by segregating affordable housing units or limiting the ability of residents of affordable housing units to access

common areas. Finally, the Adopted Rules provide that for purposes of these distribution and non-isolation requirements, a building comprised of two or more residential condominium units constitutes one eligible multiple dwelling, as that term is defined in the Act.

Hotel Prohibition

The Adopted Rules prohibit projects participating in the Program from being operated as a hotel and restricted units from being rented to corporations, partnerships or other entities.

Penalties

The Adopted Rules provide that penalties for violations of the rent stabilization and affordability requirements will be calculated as a percentage of the capitalized value of all ANNY Program Benefits at that site as of the first year that benefits were conferred and not to exceed 1,000%. The Adopted Rules provide that a penalty schedule will be published on HPD's website.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter, and section 485-x of the Real Property Tax Law.

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 one. Title 28 of the Rules of the City of New York is amended by adding a new chapter 63 to read as follows:

Chapter 63

Affordable Neighborhoods for New Yorkers Tax Incentive Benefits Pursuant to Real Property Tax Law Section 485-x

§63-01 Definitions.

As used in this chapter, the following terms shall have the following meanings. Capitalized terms not defined in this chapter shall have the meanings set forth in the Act.

Act. “Act” means section four hundred-eighty-five-x of the real property tax law, as amended.

Actual Rents. “Actual Rents” means the proposed initial monthly actual rents listed in the Workbook for the Affordable Housing Units.

Aggregate Floor Area of Eligible Multiple Dwellings in the Eligible Site. “Aggregate Floor Area of Eligible Multiple Dwellings in the Eligible Site” means the sum of the Floor Area of each Eligible Multiple Dwelling in the Eligible Site.

Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwellings in the Eligible Site. “Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwellings in the Eligible Site” means the sum of the Floor Area of each Ineligible Space in each Eligible Multiple Dwelling in the Eligible Site.

Applicable Costs. “Applicable Costs” means all of the costs associated with the Design and Construction of an Eligible Site for which the applicant for ANNY Program Benefits or any person acting on behalf of or as an agent of such applicant had the ability to hire or influence the hiring of a firm to conduct such work.

Applicant Registration Form. “Applicant Registration Form” means the form prospective applicants for ANNY Program Benefits must file in accordance with the requirements of subdivision sixteen of the Act.

Area Median Income. “Area Median Income” means the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

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 63-02(g)(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 Square Foot Assessment Cap Requirement.

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

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

Building Size Requirement. “Building Size Requirement” means the requirement that a multiple dwelling have a minimum of six units.

Commercial Space. “Commercial Space” means any space within an Eligible Multiple Dwelling that is devoted to commercial, community facility, or other non-residential use.

Common Area. “Common Area” means any space within an Eligible Multiple Dwelling to which the residents of two or more rental dwelling units have access without paying a usage fee and that is not located in a rental dwelling unit, in a Commercial Space or in a Service Area.

Construction. “Construction” means any or all work or operations necessary for the erection, assembly, installation, or equipping of an Eligible Site, or any alterations and operations incidental thereto, including any management and supervisory services related thereto.

Contract Rents. “Contract Rents” means the rent approved by the United States Department of Housing and Urban Development for Affordable Housing Units in an Eligible Multiple Dwelling with a HAP Contract.

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

Department of Finance. “Department of Finance” means the Department of Finance of the City of New York or any successor agency or department thereto.

Design. “Design” means architecture and engineering services provided for the Construction of an Eligible Site, including, but not limited to, any planning, surveys and reports, testing and investigation, and printing and blueprinting.

DSBS. “DSBS” means the New York City Department of Small Business Services.

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 units in all facilities that are 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, including any units within the Adult Care Facility that are also certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units.

HAP Contract. “HAP Contract” means any project-based Section 8 housing assistance payments contract, governed by subpart E of part 983 of chapter IX of subtitle B of title 24 of the Code of Federal Regulations, as may be amended or renewed, covering Affordable Housing Units in an Eligible Multiple Dwelling.

Hotel. “Hotel” means (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law; (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy; (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution; or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than one year shall be deemed to be a short term rental. Notwithstanding the foregoing, Market Units owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Housing Connect. “Housing Connect” means the New York City Housing Connect lottery system or any successor program administered by the Agency to market vacant Affordable Housing Units.

Housing Maintenance Code. “Housing Maintenance Code” means the Housing Maintenance Code of the City of New York, constituting §§ 27-2001 et seq. of the Administrative Code of the City of New York, as amended.

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, including any units within the Adult Care Facility that are also certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units, shall not be considered Ineligible Space.

Legal Rent. “Legal Rent” means the maximum rent permitted under Rent Stabilization, provided, however, that (a) no exemption or exclusion from any requirement of Rent Stabilization shall be applied to any Affordable Housing Unit during the Restriction Period, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to the vacancy of an Affordable Housing Unit where the rent exceeds a prescribed maximum amount, the fact that tenant income and/or unit rent exceed prescribed maximum amounts, the nature of the tenant, or any other factor; and (b) the initial rent charged and paid for a Restricted Unit shall be the initial Legal Rent.

Marketing Monitor. “Marketing Monitor” means an organization approved by the Agency in compliance with the Agency’s marketing guidelines and retained by the applicant for ANNY Program Benefits to monitor compliance with the requirements established by the Act and this chapter relating to the leasing, subleasing, and occupancy of Affordable Housing Units, including, but not limited to, ensuring that each Affordable Housing Unit is leased at a rent not exceeding the Permitted Rent and is occupied by a household approved by the Agency whose income at the time of initial occupancy of such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act. Such Marketing Monitor may be an in-house department of the applicant, a subsidiary or affiliate of the applicant, or a third-party marketing, leasing, managing, or monitoring administering agent.

Minority and Women Owned Business Enterprises. “Minority and Women Owned Business Enterprises” means a minority-owned business enterprise and/or a women-owned business enterprise certified by a governmental or quasi-governmental entity acceptable to the Agency. Applicants must provide proof upon the Agency’s request that a Minority and Women Owned Business Enterprise has been so certified.

Monitoring Contract. “Monitoring Contract” means a contract between the applicant and the Marketing Monitor that is approved in form and substance by the Agency and that:

(i) requires the fee owner to provide monthly rent rolls for all Affordable Housing Units to the Marketing Monitor and to notify the Marketing Monitor no more than seven business days after an Affordable Housing Unit becomes vacant;
(ii) requires the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Restriction Period (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs; (b) is promptly marketed pursuant to such requirements as are established by the Agency; (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Housing Unit and that has been approved by the Agency prior to execution of a lease; (d) is not offered to or rented by a corporation, partnership or other entity; and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and
(iii) requires the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Eligible Multiple Dwelling to the Agency.

Motel or Tourist Cabin. “Motel or Tourist Cabin” shall have the meaning set forth in section 12-10 of the Zoning Resolution.

Multiple Dwelling Law. “Multiple Dwelling Law” means the Multiple Dwelling Law of the State of New York.

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

Participation Goal. “Participation Goal” means twenty-five percent of the Applicable Costs.

Permanent Conversion. “Permanent Conversion” has the same meaning as set forth in an Eligible Multiple Dwelling's regulatory agreement with the tax credit monitoring agency.

Permitted Rent. “Permitted Rent” means a rent for any lease or lease renewal at any time during the Restriction Period that does not exceed the lesser of:

(i) the Legal Rent; or
(ii) the rent for any Market Unit of comparable bedroom size in the same Eligible Site; or
(iii) 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 the rent schedule to such regulatory agreement and the Utility Allowance in effect on such regulatory agreement execution date shall be utilized; or

(iv) 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:

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

Post-Completion Square Foot Assessment Cap Requirement. "Post-Completion Square Foot Assessment Cap Requirement" means the requirement that all of the units in a Homeownership Project must have an average assessed value per square foot that does not exceed \$89 upon the first assessment following the Completion Date.

Primary Residence Requirement. "Primary Residence Requirement" means the requirement that the owner of a dwelling unit in a Homeownership Project must for no less than five years from acquisition of such unit occupy it in accordance with the criteria set forth for rental dwelling units in subdivision (u) of section 2520.6 of the Rent Stabilization Code. Notwithstanding the foregoing, the minimum five year period of occupancy necessary to establish whether such unit is an owner's primary residence shall not be deemed to be interrupted by any period during which such owner temporarily relocates because he or she: (i) is engaged in military duty; (ii) is enrolled as a full-time student; (iii) is not in residence at the apartment pursuant to a court order not involving any terms or provisions of the lease/occupancy agreement, and not involving any grounds specified in the Real Property Actions and Proceedings Law; (iv) is engaged in employment requiring temporary relocation from such unit; (v) is hospitalized temporarily for medical treatment; or (vi) has other reasonable grounds that shall be determined by the Agency.

Reasonable Efforts. "Reasonable Efforts" means that the applicant for ANNY Program Benefits for an Eligible Site or any person acting on behalf of or as an agent of such applicant, in connection with the performance of any work associated with the Design and Construction of such Eligible Site, has demonstrated that it made timely requests for assistance to DSBS, provided the Agency with a description of how any assistance provided by DSBS was acted upon, and, if relevant, provided the Agency with an explanation of why the applicant did not meet the Participation Goal. In addition, the Agency shall consider the following efforts with respect to Minority and Women Owned Business Enterprises along with any other relevant factors: (i) advertisement of opportunities in general circulation media, small business media, or publications for Minority and Women Owned Business Enterprises; (ii) timely notification of specific opportunities to participate in the Design and Construction of the Eligible Site; (iii) thorough and timely responses to any inquiries; (iv) identification of portions of the Design and Construction of such Eligible Site that could be substituted for portions originally designated for participation by Minority and Women Owned Business Enterprises, and for which the applicant claims an inability to retain Minority and Women Owned Business Enterprises; and (iv) holding meetings prior to the date of bids or proposals to explain the scope of the Design and Construction of the Eligible Site.

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

Section 8. “Section 8” means a federal rent subsidy pursuant to the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended.

Service Area. “Service Area” means any space within an Eligible Multiple Dwelling that is utilized by the owner or manager of such Eligible Multiple Dwelling and their respective employees for purposes of building administration and to which residential tenants do not normally have access.

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

Utility Allowance. “Utility Allowance” means an allowance established by the Agency for the payment of utilities where the tenant of an Affordable Housing Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Workbook. “Workbook” means the Affordable Neighborhoods for New Yorkers Tax Incentive Benefits Workbook available on the Agency's website that is submitted by the applicant to the Agency for Modest Rental Projects, Large Rental Projects and Very Large Rental Projects 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 paragraph (b) of subdivision eight of the Act or, in accordance with such paragraph, the claimed exemption from such unit mix requirements; and (iii) the unit distribution proposed to satisfy paragraph (a) of subdivision eight of the Act and Section 63-03 of this chapter.

Zoning Resolution. “Zoning Resolution” means the Zoning Resolution of the City of New York, as amended.

§63-02 Application Procedure and Documentation.

(a) No Application shall be filed with respect to any Rental Project or Homeownership Project that failed to file the Applicant Registration Form and did not pay the penalty imposed by the Agency in accordance with subdivision 16 of the Act.

(b) No Application shall be filed with respect to any Rental Project before the Completion Date of such Rental Project.

(c) Notwithstanding the provisions of subdivision b of this section, where a Rental Project is composed of two or more Eligible Multiple Dwellings on the same zoning lot that are part of a single Application, such Application shall be filed no later than one year after the last Completion Date of such Eligible Multiple Dwellings, provided, however, that:

(1) an Application may be filed for the first Eligible Multiple Dwelling in such Rental Project that meets all of the eligibility requirements for ANNY Program Benefits after the

Completion Date of such Eligible Multiple Dwelling and such Application may be amended after the Completion Date of each additional Eligible Multiple Dwelling in such Rental Project;

(2) the Notice of Intent filed with the Application shall include the Affordable Housing Units in such first Eligible Multiple Dwelling as well as any Affordable Housing Units in each additional Eligible Multiple Dwelling in such Rental Project with a Completion Date that will be less than three years after the Completion Date of the first Eligible Multiple Dwelling, and any Eligible Multiple Dwellings in such Rental Project with a Completion Date that will be three years or more after the Completion Date of such first Eligible Multiple Dwelling shall be required to file separate Notices of Intent and provide proof thereof at the time such Application is amended; and

(3) no ANNY Program Benefits shall be granted to any Eligible Multiple Dwelling that is part of such Application unless all of the Eligible Multiple Dwellings in such Application that were previously granted such benefits remain in full compliance with all of the eligibility requirements for such benefits.

(d) No Application shall be filed with respect to any Homeownership Project before (1) the first assessment following the Completion Date; and (2) there are Board Authorization and Consent Forms and Deeds for each unit in such Homeownership Project.

(e)

(1) The Agency may authorize changes to any information provided in the Workbook:

(i) after the Agency has provided an initial approval thereof until the Notice of Intent has been accepted by the Agency; and

(ii) after the Notice of Intent has been accepted by the Agency only if such information conflicts with the requirements of a regulatory agreement with a federal, state or local governmental agency or instrumentality, provided, however, that with respect to both subparagraphs (i) and (ii) of this paragraph, 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.

(2) Notwithstanding paragraph (1) of this subdivision, where, in accordance with paragraph (1) of subdivision (c) of this section, an Application has been filed for a Rental Project composed of two or more Eligible Multiple Dwellings on the same zoning lot after the Completion Date of the first such Eligible Multiple Dwelling that meets all of the eligibility requirements of the ANNY Program and before the Completion Date of all additional Eligible Multiple Dwellings in such Rental Project, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area after the Workbook is submitted solely with respect to any Eligible Multiple Dwelling in such Rental Project whose Completion Date is three or more years after the Completion Date of the first Eligible Multiple Dwelling for which the Application was filed for such Rental Project in accordance with paragraph (1) of subdivision (c) of this section, and provided further, in accordance with paragraph (2) of subdivision (c) of this section, that such changes shall only be authorized until a Notice of Intent has been filed for any such Eligible Multiple Dwelling in such Rental Project whose Completion

Date is three or more years after the Completion Date of the Eligible Multiple Dwelling for which such Application was first filed.

(3) Notwithstanding paragraph (1) of this subdivision and the definition of “Permitted Rent” in section 63-01 of this chapter, where an Eligible Multiple Dwelling is receiving tax exempt bond proceeds or tax credits, the Agency may authorize the following changes to the information in the Workbook concerning the Affordable Housing Units in such Eligible Multiple Dwelling after the Agency has provided an initial approval thereof:

(i) with respect to the Actual Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until the marketing advertisement for such Affordable Housing Units has been published through Housing Connect, provided that the tax credit monitoring agency for such Eligible Multiple Dwelling has approved such changes; and

(ii) with respect to the Legal Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until Permanent Conversion, provided that such changes do not alter the Actual Rents for such Affordable Housing Units published in the marketing advertisement through Housing Connect.

(f)

(1) 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 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.

(2) Notwithstanding anything to the contrary contained in paragraph (1) of this subdivision, a Modest Rental Project, Large Rental Project or Very Large Rental Project shall submit twenty-five percent of the applicable non-refundable filing fee with its initial Workbook submission.

(g) Each Application shall include:

(1) Evidence satisfactory to the Agency that a restrictive declaration in a form satisfactory to the Agency:

(i) has been executed by the fee owner and any ground lessee of the Eligible Multiple Dwelling;

(ii) has been recorded against the real property containing the Eligible Multiple Dwelling;

(iii) with respect to a Rental Project, (A) identifies each Restricted Unit in each Eligible Multiple Dwelling; (B) identifies each Affordable Housing Unit in each Eligible Multiple Dwelling, including with respect to each such Affordable Housing Unit the number of bedrooms and the applicable prescribed percentage of Area Median Income; (C) provides that the rents to be charged to the tenants of each such Affordable Housing Unit shall be established pursuant to this chapter; (D) provides that the Affordable Housing Units in each such Eligible Multiple Dwelling shall during the Restriction Period be rented to eligible tenants at or below the Permitted Rent; and (E) provides that each Restricted Unit in each such Eligible Multiple Dwelling shall be subject to Rent Stabilization for the Restriction Period;

(iv) with respect to a Homeownership Project, provides the Building Size Requirement, the Post-Completion Square Foot Assessment Cap Requirement and the Primary Residence Requirement; and

(v) provides that each Eligible Multiple Dwelling must comply with all of the requirements for ANNY Program Benefits during the Restriction Period.

(2) Evidence satisfactory to the Agency that the Workbook was filed:

(i) for Modest Rental Projects containing no more than ten residential dwelling units, no earlier than six months before the Completion Date and no later than two months after the later of (A) the Completion Date; or (B) the effective date of this rule;

(ii) for Modest Rental Projects containing more than ten residential dwelling units and less than one hundred residential dwelling units, no earlier than nine months before the Completion Date and no later than two months after the later of (A) the Completion Date; or (B) the effective date of this rule; or

(iii) for Large Rental Projects and Very Large Rental Projects, no earlier than twelve months before the Completion Date and no later than two months after the later of (A) the Completion Date; or (B) the effective date of this rule; and

(3) Evidence satisfactory to the Agency that the Notice of Intent to begin marketing the Affordable Housing Units was filed with the Agency or, with respect to any Application filed in accordance with subdivision (c) of this section, one or more Notices of Intent were filed in accordance with paragraph (2) of subdivision (c) with such Application and any amendment thereto.

(4) Proof that the Agency determined that:

(i) an Eligible Site will meet the unit mix requirements for Affordable Housing Units established pursuant to paragraph (b) of subdivision eight of the Act, or, in accordance with such paragraph, 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 paragraph (a) of subdivision eight of the Act and section 63-03 of this chapter.

(5) An executed Monitoring Contract for a Modest Rental Project, Large Rental Project and Very Large Rental Project.

(6) An affidavit from a registered architect or professional engineer licensed to practice and in good standing with the New York State Department of Education that, among other things, calculates the Aggregate Floor Area of each Eligible Multiple Dwelling in the Eligible Site and the Aggregate Floor Area of all Ineligible Space in each Eligible Multiple Dwelling in the Eligible Site.

(7) With respect to a Homeownership Project, the Deed and the Board Authorization and Consent Form for every unit in such Homeownership Project.

(8) An affidavit that such Rental Project or Homeownership Project either:

(i) met the Participation Goal; or

(ii) made Reasonable Efforts to meet the Participation Goal.

§63-03 Distribution Requirements.

(a) If a Story in an Eligible Multiple Dwelling 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 such Eligible Multiple Dwelling; or

(2) there is only one dwelling unit on such Story.

(b) Each Building Segment in an Eligible Multiple Dwelling in a Modest Rental Project, Large Rental Project or Very Large Rental Project must contain one or more Affordable Housing Units and have the same or similar proportion of Affordable Housing Units to Market Units.

(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 paragraph (a) of subdivision eight 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 paragraph (a) of subdivision eight 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.

§63-04 Rent and Income During the Restriction Period.

(a) The rent for an Affordable Housing Unit shall not exceed the Permitted Rent;

(b) Pursuant to paragraph (j) of subdivision 8 of the Act, the Marketing Band for the initial rents of Affordable Housing Units shall be established by deducting three percentage points from the applicable Area Median Income, adjusted by unit size and the applicable Utility Allowance;

(c) Each Affordable Housing Unit shall be occupied by a household whose income at the time that such household initially occupies such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act;

(d) An Affordable Housing Unit shall be leased, both upon initial rent-up and upon any subsequent vacancy, pursuant to such marketing guidelines as may be published by the Agency;

(e) No Affordable Housing Unit shall be held off the market for a period that is longer than reasonably necessary;

(f) No Affordable Housing Unit shall be offered to a corporation, partnership or other entity;

(g) No lease for an Affordable Housing Unit can be executed until the Agency verifies the eligibility of the proposed tenants; and

(h) Each tenant of an Affordable Housing Unit shall be offered a rent stabilized lease for a term of either one or two years, at such tenant's option.

§63-05 Hotels, Motels and Tourist Cabins.

(a) Eligible Sites located on land that contained dwelling units designated as Motel rooms or as Tourist Cabins on the certificate of occupancy in effect three years prior to the Commencement Date shall not be subject to subdivision ten of the Act with respect to any dwelling units in such Motel or Tourist Cabin that existed on such date and that were thereafter demolished, removed or reconfigured.

(b) No Eligible Multiple Dwelling that is operated as a Hotel shall be eligible for ANNY Program Benefits.

§63-06 Penalty Provisions.

On or after the expiration date of the Ten Year Benefit, Twenty Year Benefit, Thirty-Five Year Benefit or Forty-Year Benefit, as applicable, the Agency may, after providing notice and an opportunity to be heard in accordance with the procedures established pursuant to chapter 39 of this title, impose a penalty for any violations of the Rent Stabilization requirements or the affordability requirements established pursuant to subdivision eight of the Act, on the owner of such Eligible Site at the time of such violation, in accordance with the following method of calculation: A penalty imposed under this section shall be computed as a percentage of the capitalized value of all ANNY Program Benefits on the Eligible Site containing such Rental Project, calculated as of the first year that benefits were conferred, not to exceed one thousand percent. The Agency shall establish a schedule in accordance with this formula.