



Date: August 20, 2025

To: NYC Department of Finance (DOF)

Re: Public Comment – Proposed Amendments to the Industrial and Commercial Abatement Program (ICAP)
Regulations – Rule 36-05

1. Introduction

Lam Group is a vertically integrated family office based out of New York City that specializes in the development, operations, and management of commercial, residential, retail, hospitality and mixed-use real estate properties in New York City.

Lam Group submits this public comment to DOF on the proposed rules implementing the Industrial and Commercial Abatement Program (ICAP) to propose that DOF delete the language set forth in Rule 36-15(d). Section 36-15(d) currently limits the application of the ICAP Rules promulgated by DOF “only to projects for which the preliminary application is filed after the effective date of this rule,” which date is March 12, 2017. The limitation in Rule 36-15(d) prevents project applicants who submitted their preliminary applications prior to the effective date of March 15, 2017, which includes Lam Group, from benefiting from Rule 36-05.

2. Background

Lam Group, together with partners in the venture 233 West 125th Street Danforth LLC (“Applicant”), has been redeveloping the site of the abandoned Victoria Theater located at 233 West 125th Street in Harlem (Block 1931, Lots 1003 and 1005) prominently situated on Harlem’s central business corridor, into a new, mixed-use development (the “Project”), including renovated theater spaces, retail, a hotel, and residential apartments including affordable housing.

To maximize the cost-efficiency of the site’s redevelopment, Applicant applied for a tax abatement through ICAP . The project qualifies for ICAP because it satisfies all of the program criteria. First, it is located on 125th Street in Harlem, meeting the program’s location requirements. Second, the Project is a mixed-use development containing renovated theaters, retail, and a hotel, satisfying the commercial use requirements. Third, the Project planned to, and ultimately did, invest more than 30% of the initial Taxable assessed value of the building on the Property within four years of receiving a building permit from NYC Department of Buildings (DOB).

Applicant submitted the Project’s first preliminary application to DOF on December 22, 2014. At that time, DOF had not promulgated the ICAP Rules. Indeed, no ICAP Rules had even been published for public comment, which did not occur until nearly two years later, in August 2016, even though the ICAP enabling legislation was effective as of July 1, 2008 and provided that “application for benefits may be made immediately following the effective date.” See RPTL § 489-dddddd(1)(a); N.Y.C. Admin. Code § 11-271(a)(1).

On December 28, 2015, DOB issued the first building permit for the Project. A building project seeking ICAP benefits must invest at least 30% of its initial TAV within four years of receiving its initial building permit. Thus, under the Project’s initial application, the initial taxable assessed value (TAV) of the building improving the Property was measured as of January 5, 2015. Given the first building permit date of December 28, 2015, the last possible year for the new building’s final TAV to be measured was on January 5, 2020. See RPTL § 489-bbbbbb; N.Y.C. Admin. Code § 11-269.

On November 23, 2016— while DOF’s rulemaking process was underway but before it promulgated the final ICAP Rules effective March 12, 2017—Applicant’s final ICAP application was submitted to DOF. On January 24, 2017, DOF acknowledged the Project’s eligibility for ICAP benefits and tentatively approved its final application, pending confirmation of “all the requirements under the ICAP statute[.]”

The Project had proceeded with construction in the intervening years, but like many large-scale projects—and crucially, as anticipated by the DOF’s final ICAP Rules—delays and permitting issues ultimately increased the cost of the Project by more than 10% of its original estimate. DOB issued the Project a renewal building permit on April 4, 2017, after which (except for COVID-19 Pandemic-related delays) construction proceeded more smoothly. After several years of construction, including long delays and supply chain issues resulting from the COVID-19 Pandemic, the Project was completed in 2023. Applicant submitted the Project’s notice of completion to DOF on October 27, 2023, using a completion date of June 16, 2023.

Given the Project’s increase in costs (which had actually increased by 86% between 2015 and the completion of construction), Applicant sought to designate the renewal building permit as its “first building permit” under ICAP Rule 36-04 and qualify as a “new project” under ICAP Rule 36-05. By doing so, the Project could shift the four-year window in which the difference in TAV was measured from the original time frame commencing from DOB’s issuance of the original building permit on December 28, 2015 (i.e., from the 2015/16 tax year for commencement of construction to the 2019/20 tax year for completion of construction), to one measured from DOB’s issuance of the renewal building permit on April 4, 2017 (i.e., from the 2017/18 tax year for commencement of construction to the 2022/23 tax year for completion of construction). If the Project were able to use the date of the renewal DOB permit as its commencement date, its base ICAP benefit would be \$2,147,566, yielding a projected \$33,327,267 in tax savings over the next twenty-five years. However, if the Project were to measure its ICAP benefit from the date of its initial building permit in 2015, its base benefit would be halved to \$1,063,598, and its tax abatement would plummet to \$16,485,774 over the next twenty-five years.

Applicant submitted a revised ICAP application to DOF on June 24, 2024 that used the date of the renewal building permit as its commencement date. DOF, however, rejected the revised ICAP application. Because “there was no provision in ICAP policies administered by DOF to change” the commencement date when Plaintiff submitted its original preliminary application in 2014, DOF did not allow Plaintiff to use the 2017 ICAP Rules—the first rules that DOF had ever enacted—to amend its application.

3. Regulatory Context

ICAP Rules 36-04 and 36-05 as promulgated by DOF effective March 12, 2017 address a practical issue that many ICAP applicants face. At times, DOB might issue a building permit to an applicant before construction on the applicant’s underlying development project before construction on the applicant’s underlying development project could actually begin. The ICAP statute, however, provides that “applicants must meet the appropriate minimum required expenditure [i.e., the 30% of TAV]... no later than four years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction.” RPTL § 489-cccc(1)(a); N.Y.C. Admin. Code § 11-270(a)(1). DOF then compares the property’s TAV before improvements to its TAV after improvements to calculate the project’s ICAP benefit—the greater the difference in TAV, the greater the improvements to the property, and thus, the greater the ICAP abatement for the developer. Because the issuance of the first building permit triggers the four-year period used by DOF to calculate the ICAP abatement, applicants that received a first building permit before construction could actually begin could face a scenario where the final difference in the TAV between the two applicable tax assessment dates would be decreased and cause the ICAP benefit to be diminished or, at worst, eliminated entirely.

To remedy this issue, Rule 36-04 defines “first building permit” (which is not otherwise defined in the ICAP statute, see RPTL § 489-aaaaa; N.Y.C. Admin Code § 11-268) as “the permit that would allow the construction work that is the subject of the ICAP application to proceed, even though... another permit is issued for the same project on the basis of same or similar plans, subject to the provisions of Section 36-05(a) of this chapter.” Section 36-05(a) then provides, in relevant part, that “a project will be deemed a new project if one of the following conditions applies:

(1) a building permit was previously issued for the project and an applicant has shown that there is a change in the project for which a new building permit issued which meets at least one of the following criteria: (i) change in the total estimated cost of the project of at least 10 percent as certified by the applicant; or (ii) change in the total floor area of the project of at least 10 percent; or (iii) change in use.”

In effect, DOF’s proposed definition of “first building permit” set forth in Section 36-04 allows an applicant to be deemed a “new project,” under Section 36-05(a) and thus shift the four-year window in which its difference in TAV was measured, if DOB had previously issued a building permit, but since that time, (a) the project had changed uses; (b) the total planned floor area had increased or decreased by 10%; or (c) the total estimated cost of the project had changed (i.e., increased or decreased) by at least 10%.

However, Section 36-15(d) of the ICAP Rules, which states that “[t]his chapter shall only apply to projects for which the preliminary application is filed after the effective date of this rule,” prevents the Applicant and the Project from taking advantage of Rules 36-04 and 36-05, even though the Project otherwise fully qualifies for ICAP.

4. Proposed Change / Clarification

Lam Group proposes that Section 36-15(d) be stricken and removed from the ICAP Rules:

§ 36-15 Administration of ICAP Program.

a. The department may submit written requests to any ICAP benefit applicant or ICAP benefit recipient for additional information which may include, but is not limited to, the production of books, records and documents relating to any application made for ICAP benefits or submission of a certificate of continuing use. Such written requests will contain a 90 day deadline. The Commissioner may, after providing notice and an opportunity to be heard to the ICAP benefit applicant or ICAP benefit recipient deny, reduce, suspend, terminate or revoke ICAP benefits if an applicant or ICAP benefit recipient fails to timely comply with such a request. Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP applicant or ICAP recipient has the right to present information as to why they should not be penalized. This information must be submitted to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

b. The department may, consistent with the law, upon reasonable notice enter and inspect property during normal business hours to determine a property's use and whether a property is eligible for the abatement benefits that the property has applied for or is receiving.

c. The Commissioner may, after providing notice to the ICAP benefit applicant or ICAP benefit recipient an opportunity to be heard deny, reduce, suspend, terminate or revoke any abatement benefits granted under this chapter where:

(1) A recipient fails to comply with any requirement provided for by Title 2-f of Article 4 of the real property tax law, Chapter 5 of Title 11 of the Administrative Code, or this chapter; or

(2) An application, certificate, report or other document delivered by an applicant or benefit recipient contains a false or misleading statement as to a material fact or omits any material fact, and may declare any applicant or recipient who makes such false or misleading statement or omits such material fact, ineligible for future tax abatements for the subject property or any other property.

Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP applicant or ICAP recipient has the right to present information as to why the ICAP recipient should not be penalized to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

d. This chapter shall apply only to projects for which the preliminary application is filed after the effective date of this rule.

5. Legal Justification

The ICAP enabling legislation does not define “first building permit” within the statutory text. See RPTL § 489-aaaaa; N.Y.C. Admin. Co § 11-268. In passing ICAP into law, both the New York State Legislature and the City Council delegated to DOF the power to define “first building permit” in line with the statutory goals as part of its

rule-making power to administer ICAP. See RPTL § 489-hhhhhh(6); NYC Admin. Code § 11-275(f) (authorizing DOF “[t]o make and promulgate any other rules to carry out the purposes of this title/part”). The ICAP enabling legislation also expressly provides that applications for benefits may be made immediately following the effective date of the statute of July 1, 2008.

Because the application of the ICAP Rules, by virtue of Section 36-15(d), is limited only to applications that are filed after the effective date of March 12, 2017, DOF is ascribing one meaning to “first building permit” for applications filed after promulgating the ICAP Rules and another to those applications filed before the promulgation of the ICAP Rules. This should not be the case. The phrase “first building permit” must have a consistent meaning across the ICAP statute and the ICAP Rules, and the Rules should undercut the effective date of the ICAP statute.

6. Rationale

Lam Group is proposing this amendment to the ICAP Rules so that the original purpose of the ICAP statute as enacted in July 2008 is realized. Projects that have provided much-needed economic investment and revitalization to the qualifying neighborhoods that they serve are intended to receive the abatement. The current Rules unfairly exclude projects that are otherwise qualified but for the arbitrary time bar contained in Section 36-15(d). The proposed deletion of Section 36-15(d) would eliminate the arbitrary bar created by DOF that prejudices applicants for ICAP benefits who proceeded with filing their preliminary applications during the interim period between the effective date of the ICAP statute in July 2008 and the effective date of the ICAP Rules in March 2017. It would also maximize the number of projects that qualify for an abatement through ICAP, thus furthering the purpose of the ICAP statute.

7. Conclusion

Thank you for your consideration of these comments.