New York City Department of Finance

Notice of Adoption of Final Rules

Pursuant to the authority vested in the New York City Department of Finance ("DOF") by sections 1043(a) and 1504 of the New York City Charter ("Charter"), Part 5 of Subchapter 2 of Chapter 2 of Title 11 of the New York City Administrative Code ("Administrative Code") and Title 2-F of Article 4 of the Real Property Tax Law ("RPTL"), DOF hereby adopts rules to comply with amendments made to the Administrative Code and the RPTL in relation to the Industrial and Commercial Abatement Program ("ICAP"). In addition, the rule amendments provide criteria to determine when a parking facility is associated with residential construction work under ICAP.

Statement of Basis and Purpose

The New York City Department of Finance ("DOF") is adopting the following rule change pursuant to the powers set forth in New York City Charter ("Charter") §§ 1043(a) and 1504, as well as Part 5 of Subchapter 2 of Chapter 2 of Title 11 of the New York City Administrative Code ("Administrative Code") and Title 2-F of Article 4 of the Real Property Tax Law ("RPTL"). This rule amendment consists of changes to bring the Rules of the City of New York ("RCNY") into alignment with changes to the Administrative Code and RPTL enacted by the Legislature in 2020, 2024 and 2025. These changes relate to the Industrial and Commercial Abatement Program ("ICAP"), which offers property tax abatements for up to 25 years for eligible industrial and commercial buildings that are built, modernized, expanded, or otherwise improved. A proposed version of these rules was published in the City Record on July 21, 2025. *See* City Record at 4041-43 (Jul. 21, 2025). A hearing for public comment was held on August 20, 2025. DOF received written and oral comments. DOF is grateful for the contributions of those who submitted comments.

This rule:

- Adds new definitions to the rules,
- Provides for projects on Governors Island to be eligible for more generous ICAP benefits,
- Extends the ICAP expiration date,
- Generally prohibits the use of ICAP benefits for self storage, storage warehouse and parking facilities, but specifies the types of parking facilities that are eligible for ICAP benefits, and
- Clarifies the effective date of provisions of chapter 36 of title 19 of the RCNY.

Section one of this rule amends 19 RCNY § 36-01 to provide definitions for "financial assistance," "parking facility," "self-storage facility" and "storage warehouse." Part S of Chapter 55 of the Laws of 2025 and Part SS of Chapter of 56 of the Laws of 2020 amended Administrative Code § 11-268 and RPTL § 489-cccccc to include these new definitions, and this rule incorporates the definitions in the RCNY. One comment inquired whether "storage warehouse" includes facilities that have warehouses for distribution and assembling. The Administrative Code, the RPTL, and this rule define a "storage warehouse" by reference to the licensing requirements of the Department of Consumer and Worker Protection. Because DOF is not the agency that determines what may be licensed as a storage warehouse, this comment is outside of the scope of this rulemaking process. As such, DOF did not amend this rule in response to this comment.

Sections two, three, and four of this rule amend chapter 36 of title 19 of the RCNY to align with amendments made to Administrative Code § 11-274 and RPTL § 489-gggggg by Part S of Chapter 55 of the Laws of 2025 in relation to Governors Island's designation as a special commercial abatement area and its exception from the commercial exclusion area. Properties within special commercial abatement areas are eligible for more generous ICAP benefits. Properties within commercial exclusion areas are ineligible for certain ICAP benefits. These rule amendments conform the RCNY to this recent state legislation authorizing greater tax incentives for development on Governors Island.

Section five of this rule amends 19 RCNY § 36-03 to extend ICAP to 2029 in accordance with amendments made to Administrative Code § 11-271 and RPTL § 489-dddddd by Chapter 332 of the Laws of 2024.

Section six of this rule amends 19 RCNY § 36-03 to provide that, when an applicant is applying for ICAP benefits for a parking facility, they must submit required documentation demonstrating eligibility for ICAP benefits.

Section seven of this rule amends 19 RCNY § 36-06 to provide that unless a parking facility is associated with residential construction work in a separate tax lot and such residential construction work is subject to financial assistance from the Department of Housing Preservation and Development, a parking facility is ineligible for ICAP benefits. This new subdivision is added in accordance with amendments made to Administrative Code § 11-270 and RPTL § 489-cccccc by Part S of Chapter 55 of the Laws of 2025.

In addition, Administrative Code § 11-270 and RPTL § 489-cccccc obligated DOF to set standards for determining when a parking facility is associated with residential construction work. DOF will use the following criteria to determine whether there is a sufficient link between a parking facility and residential construction work:

1. whether the parking facility and the residential construction work are in separate tax lots within the same building or structure;
2. whether the parking facility creates parking that is necessary for the residential construction work to be in compliance with zoning requirements for off-street parking; and
3. whether there is a contractual or business relationship linking the parking facility and the residential construction work or preferential rates or exclusive rights to parking are offered to residents of the residential construction work.

Relationships between parking facilities and residential construction work can take different forms. While the applicable parking facility may be in the same building as the applicable residential construction project, this may not always be true. Even when a parking facility and residential construction work are not in the same building or structure, they may nonetheless be linked by necessity and a contractual or business relationship. To allow for the fact that the relationship between the parking facilities and residential construction work may present itself in a variety of ways, DOF requires that applicants provide documentation for at least two of the three criteria to be eligible for ICAP benefits.

Oral and written comments expressed that the exception to the prohibition on the receipt of ICAP benefits for parking facilities should extend to facilities associated not only with residential projects, but also with mixed-use or commercial projects. The rule language at issue, 19 RCNY § 36-06(i), merely tracks the corresponding statutory language in Administrative Code § 11-270(c)(5) and RPTL § 489-cccccc(3)(e), added by Part S of Chapter 55 of the Laws of 2025, which limit ICAP benefits to those parking facilities that are associated with residential construction work. To the extent that commenters seek to expand applicability of this exception, these commenters would need to seek such policy changes through the legislative process, not this regulatory process. However, to further clarify how DOF will determine whether a parking facility is associated with residential construction work, this final rule requires that, for a parking facility to be eligible for ICAP benefits, the developer of such facility must execute an affidavit affirming that the maximum number of parking spaces included in such parking facility does not exceed the number of dwelling units included in such building or structure. This provision is intended to strike a balance between preserving developer flexibility and closely following the goals of Chapter 55 by ensuring that the scale of a parking facility receiving ICAP benefits does not significantly exceed that which is necessary to satisfy the parking needs of the applicable residential construction work. It is conceivable that, in some circumstances, some portion of these parking spaces could be used for non-residential purposes, provided the parking facility complies with all of the requirements of these rules.

Section seven of this rule amends 19 RCNY § 36-06 to provide that ICAP benefits will not be granted for construction work on real property where any portion of such property is to be used as a self-storage facility or a storage warehouse.

DOF received oral and written comments concerning the application of 19 RCNY §§ 36-04, 36-05 and 36-15 relating to the definitions of “first building permit” and “new project” and the effective date of these provisions. These rules do not address the concepts of a “first building permit” or a “new project,” so to address these provisions more specifically would be outside of the scope of this regulatory process. However, DOF added a section 8 to the final rule amending 19 RCNY § 36-15(d) to clarify that each amendment to chapter 36 of title 19 of the RCNY shall apply to preliminary applications filed after the effective date of such newly amended chapter, unless otherwise provided by law.

Because written and oral comments expressed uncertainty as to the effective date of certain provisions of chapter 36, DOF is clarifying that, while these regulatory provisions themselves apply prospectively, parts of this rule are intended only to align the RCNY with corresponding statutory provisions codified by the Legislature in the Administrative Code and RPTL. The inclusion of these provisions in this rule does not limit or alter the effect of any corresponding provision in state or local law.

19 RCNY § 36-06(i)(1), as added by section 7 of this rule, codifies a rule that mirrors Administrative Code § 11-270(c)(5) and RPTL § 489-cccccc(3)(e), which only apply to a project for which the first building permit is issued on or after 90 days after the effective date of Chapter 55 of the Laws of 2025, or if no permit is required, for which construction commences on or after such effective date, except that such paragraphs (5) and (e) do not apply to any project located in a zoning district for which an action amending the designation of such district was filed with the mayor of the city of New York pursuant to Charter § 197-d within one year prior to the effective date of Chapter 55 of the Laws of 2025.

19 RCNY §§ 36-01(h-1), (q-1) and (z-1), as added by section 1 of this rule, 19 RCNY § 36-02(b), as amended by section 2 of this rule, 19 RCNY § 36-02(c)(3), as amended by section 3 of this rule, 19 RCNY § 36-02(f), as amended by section 4 of this rule and 19 RCNY § 36-06(j)(2), as added by section 7 of this rule, codify rules that mirror Administrative Code §§ 11-268(f-1), (k-1), and (o-2), 11-270(c)(6), 11-274(b), 11-274(c)(3), and 11-274(d) and RPTL §§ 489-cccccc(3)(f), 489-gggggg(2)(a-1), 489-gggggg(2)(e), 489-gggggg(c)(3), and 489-gggggg(4), which apply to projects for which the first building permit is issued after the effective date of Chapter 55 of the

Laws of 2025, or if no permit is required, for which construction commences after such effective date.

19 RCNY § 36-03(b)(3), as amended by section 5 of this rule, codifies a rule that mirrors Administrative Code § 11-271 and RPTL § 489-dddddd, which apply to projects for which the first building permit is issued after the effective date of Chapter 332 of the Laws of 2024, or if no permit is required, for which construction commences after such effective date.

19 RCNY § 36-01(y-1), as added by section 1 of this rule, and 19 RCNY § 36-06(j)(1), as added by section 7 of this rule, codify rules that mirror Administrative Code §§ 11-268(o-1) and 11-270(c)(4) and RPTL § 489-cccccc(3)(d), which apply to projects for which the first building permit is issued after July 1, 2020 or if no permit is required, for which construction commences after July 1, 2020.

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.

Rule Amendment

Section 1. Section 36-01 of Title 19 of the Rules of the City of New York is amended by adding new subdivisions h-1, q-1, y-1 and z-1 to read as follows:

h-1. "Financial assistance" means loans, grants, tax credits, tax exemptions, tax abatements, subsidies, mortgages, debt forgiveness, and land conveyances for less than appraised value provided in accordance with a regulatory agreement entered into with the department of housing preservation and development, except that "financial assistance" shall not include as-of-right assistance or benefits.

q-1. "Parking facility" means any real property or portion thereof on which exists a facility operated in a manner that requires a license for the operation of a garage or parking lot issued by the department of consumer and worker protection.

y-1. "Self-storage facility" means any real property or a portion thereof that is designed and used for the purpose of occupying storage space by occupants who are to have access thereto for the purpose of storing and removing personal property, pursuant to subdivision 1 of section 182 of the lien law.

z-1. "Storage warehouse" means any real property or portion thereof on which exists a building or structure in which a consumer's household goods are received for storage for compensation operated in a manner that requires a license for the operation of a storage warehouse issued by the department of consumer and worker protection.

§ 2. Subdivision b of section 36-02 of Title 19 of the Rules of the City of New York is amended to read as follows:

b. Commercial exclusion area. The commercial exclusion area is the area in Manhattan lying south of the centerline of 96th Street, except for (i) the areas in Manhattan designated for commercial renovation projects as commercial renovation areas that are described in Subdivision c, [and] (ii) the area designated for new construction as described in Subdivision d, and (iii) beginning January 1, 2026, Governors Island.

§ 3. Paragraph (3) of subdivision c of section 36-02 of Title 19 of the Rules of the City of New York is amended to read as follows:

(3) The area in Manhattan south of the center line of 59th Street, other than the areas (i) designated renovation areas by Paragraphs (1) and (2) of this subdivision, or (ii) beginning January 1, 2026, Governors Island.

§ 4. Subdivision f of section 36-02 of Title 19 of the Rules of the City of New York is amended to read as follows:

f. *Special commercial abatement area*.

(1) The boundaries of special commercial abatement areas as designated by the temporary commercial incentive area boundary commission will be described on the department's website. Notwithstanding any provision of law to the contrary, beginning January 1, 2026, Governors Island shall be designated a special commercial abatement area for the purposes of this chapter, provided that such designation may be modified in whole or in part in accordance with the procedures set forth in Section 489-gggggg of the Real Property Tax Law and § 11-274 of the Administrative Code.

(2) In accordance with Section 489-gggggg of the Real Property Tax Law and § 11-274 of the Administrative Code, the temporary commercial incentive area boundary commission may designate an area in the City of New York, other than in the area lying south of the centerline of 96th Street in Manhattan, not including Governors Island, to be a special commercial abatement area if it determines that market conditions in the area are such that the availability of a special abatement is required in order to encourage commercial construction in such area.

§ 5. Paragraph (3) of subdivision b of section 36-03 of Title 19 of the rules of the City of New York is amended to read as follows:

(3) The preliminary application deadline for ICAP benefits is March 1, [2019] 2029. Work performed pursuant to a building permit first issued after April 1, [2019] 2029, shall not be included in the project, except as otherwise provided by statute.

§ 6. Subdivision b of section 36-03 of Title 19 of the Rules of the City of New York is amended by adding a new paragraph (5) to read as follows:

(5) If a preliminary application includes an application for benefits for a parking facility, such preliminary application must include documentation in accordance with 19 RCNY § 36-06(i).

§ 7. Section 36-06 of Title 19 of the Rules of the City of New York is amended by adding new subdivisions i and j to read as follows:

i. Parking facilities. (1) No benefits shall be granted for construction work on real property where any portion of such property is used as a parking facility, except where a parking facility is associated with residential construction work on a separate tax lot and such residential construction work is subject to financial assistance from the department of housing preservation and development.

(2) A parking facility is associated with residential construction work in a building or structure if:

(i) the department of housing preservation and development certifies to the department that the residential construction work is receiving financial assistance from the department of housing preservation and development;

(ii) the developer of such parking facility executes an affidavit stating that the number of parking spots included in such parking facility does not exceed the number of dwelling units included in such building or structure; and

(iii) the applicant demonstrates that it meets two or more of the following three clauses:

(A) such parking facility and such residential construction work are in separate tax lots within the same building or structure;

(B) the developer of such parking facility executes an affidavit affirming or the department of housing preservation and development certifies that the creation of such parking facility will generate parking that is necessary to satisfy requirements under the zoning resolution for off-street parking accessory to such residential construction work; and

(C) either (i) the developer of such parking facility executes an affidavit affirming or the department of housing preservation and development certifies that the construction of such parking facility and such residential construction work were authorized or financed as part of the same transaction; or (ii) the developer of such parking facility executes an affidavit affirming that such parking facility will offer preferential rates or exclusively offer parking facility services to residents of the residential building that will be constructed as part of such residential construction work.

j. No benefits shall be granted for construction work on real property where any portion of such property is to be used as:

(1) a self-storage facility; or

(2) a storage warehouse.

§ 8. Subdivision d of section 36-15 of Title 19 of the Rules of the City of New York is amended to read as follows:

d. This chapter shall apply only to projects for which the preliminary application is filed after the effective date of this [rule] chapter, as amended, except as otherwise provided by law.