

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing RPTL Section 421-a(17) Extended Affordability Benefits

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Section 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law, and in accordance with the requirements of Section 1043 of the New York City Charter, the Department of Housing Preservation and Development is adding a new chapter 49 to Title 28 of the Rules of the City of New York to implement the extended affordability benefit program adopted by the State Legislature in Chapter 20 of the Laws of 2015.

A notice of proposed rulemaking was published in the City Record on March 7, 2016. A public hearing was held on April 12, 2016.

Statement of Basis and Purpose of Rules

New York State Real Property Tax Law §421-a provides real property tax exemptions for eligible, new multiple dwellings. HPD determines eligibility for §421-a real property tax exemptions. HPD is proposing a new Chapter 49 of Title 28 of the Rules of the City of New York (the "421-a Extended Affordability Program Rules") to implement Subdivision 17 of Real Property Tax Law §421-a.

Subdivision 17 provides a 50% exemption from real property taxation for either 10 or 15 years. This benefit is available to multiple dwellings that commenced construction prior to July 1, 2008 and were granted either 25 or 20 years of §421-a benefits prior to June 15, 2015 for making at least 20% of their dwelling units affordable to persons or families of low income. Those properties that had been granted 25 years of benefit are eligible for an additional 10-year 50% exemption; those that had been granted 20 years of benefit are eligible for an additional 15-year 50% exemption. To get this additional benefit, all residential tax lots in such multiple dwellings must be operated as rentals. They also must maintain the affordability of the original affordable units at the levels of affordability originally required (typically 80% of Area Median Income ("AMI")), as well as restricting an additional 5% of their dwelling units to be affordable to individuals or families whose household income is at or below 130% of AMI.

The extended benefit will start on the later of the expiration date for the original §421-a real property tax exemption or the date upon which a restrictive declaration is recorded against the property.

The adopted rules:

- Provide that no application for extended benefits can be filed before the property is in compliance with the requirements for such benefits. Such applications may be filed on or before the later to occur of December 31, 2016 or eighteen months after the property's original 421-a benefits have expired.
- Require each applicable project to have been issued a Final Certificate of Eligibility for such 20- or 25-year benefit and delivered it to the Department of Finance.
- Establish the documentation applicants must submit with their applications for the Extended Benefit, including:

- 1) Evidence satisfactory to HPD that they have recorded a Restrictive Declaration identifying each Affordable Housing Unit, including its AMI limit and number of bedrooms, and requiring that the rents of such units shall be set in accordance with these rules. This Restrictive Declaration also must provide that all of the Affordable Housing Units in the Extended Affordability Property must, for the Extended Affordability Period, comply with all applicable provisions of Section 504 of the Rehabilitation Act and be rented to eligible tenants at or below the rent ceiling established by such rules and be subject to rent stabilization.
- 2) Evidence satisfactory to HPD that since the building was originally completed, the original 20% of the dwelling units in the property designated as Affordable Housing Units were occupied by households who met the AMI limitations and that prior to the commencement of the Extended Benefits, an additional 5% of the dwelling units in such property have been occupied by households whose incomes are at or below 130% of AMI.
- 3) A proposed Monitoring Contract with an independent marketing monitor.
- 4) A copy of a notice of intent to begin marketing the dwelling units designated for households at or below 130% of AMI and, with certain limited exceptions, any vacancies in the original 20% of the dwelling units in the property designated as Affordable Housing Units through the New York City Housing Connect lottery system, as well as satisfactory evidence that the name of the proposed Marketing Monitor and such notice of intent to begin marketing was filed with HPD at least 60 days prior to the date upon which the first lease for an Affordable Housing One Hundred Thirty Percent Unit will be executed.
 - Establish the rent and income restrictions that apply to the Affordable Housing Units during the Extended Affordability Period.
 - Require the tenants of Affordable Housing Units be offered either a one or two year rent stabilized lease, at their option.
 - Prohibit Affordable Housing Units from being operated as a hotel or rented to corporations, partnerships or other entities.

HPD's authority for these rules is found in Section 1802 of the New York City Charter and Section 421-a of the Real Property Tax Law.

New material is underlined.

[Deleted material is bracketed.]

"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.

Adopted Rules

Section 1. Title 28 of the Rules of the City of New York is amended by adding a new chapter 49 to read as follows:

Chapter 49

Eligibility Requirements Pursuant to Real Property Tax Law Section 421-a(17)

§49-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means subdivision seventeen of section four hundred-twenty-one-a of the real property tax law, as amended.

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.

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

Final Certificate of Eligibility. "Final Certificate of Eligibility" means the document issued by the Agency in accordance with chapter six of this title that provides for Post-Construction Benefits.

HDC. "HDC" means the New York City Housing Development Corporation.

HFA. "HFA" means the New York State Housing Finance Agency.

Housing Connect. "Housing Connect" means the New York City Housing Connect lottery system administered by the Agency to market vacant affordable dwelling units.

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 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.

Legal Rent. "Legal Rent" means the maximum rent permitted under Rent Stabilization; provided, however, that no exemption or exclusion from any requirement of Rent Stabilization shall be applied to any Affordable Housing Unit during the Extended Affordability 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.

Market Units. "Market Units" means any dwelling units in an Extended Affordability Property other than Affordable Housing Units.

Marketing Monitor. "Marketing Monitor" means an organization approved by the Agency and retained and paid for by the applicant 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.

Monitoring Contract. "Monitoring Contract" means a contract between the applicant and the Marketing Monitor in form and substance approved by the Agency.

Such Monitoring Contract shall, at a minimum:

(i) require the fee owner to provide monthly rent rolls to the Marketing Monitor and to notify the Marketing Monitor no more than seven business days after an Affordable Housing Unit becomes vacant;

(ii) require the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Extended Affordability 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 identified on the log established pursuant to Housing Connect , or where applicable, on an HFA or HDC waiting list, 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) require the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Extended Affordability Property to the Agency.

Permitted Rent. "Permitted Rent" means a rent that does not exceed, for any lease or renewal thereof at any time during the Extended Affordability Period, the lesser of (i) thirty percent of the applicable Area Median Income minus the amount of any applicable Utility Allowance, provided, however, that solely for purposes of establishing the initial rent for each Affordable Housing One Hundred Thirty Percent Unit, the Area Median Income in effect as of the date of filing of a notice of intent to begin marketing with the Agency shall be utilized, or (ii) the Legal Rent.

Post-Construction Benefits. "Post-Construction Benefits" means benefits pursuant to Real Property Tax Law Section 421-a for the period after which a Twenty Year Benefit Property or Twenty-five Year Benefit Property was issued either a permanent certificate of occupancy for the entire building or a temporary certificate of occupancy for all of the residential areas contained therein.

Rent Stabilization. "Rent Stabilization" means, collectively, the rent stabilization law of nineteen hundred sixty-nine, the rent stabilization code, and the emergency tenant protection act of nineteen seventy-four, all as in effect on June 15, 2015 or as amended thereafter, together with any successor statutes or regulations addressing substantially the same subject matter.

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.

§49-02 Application Procedure and Documentation.

a. No application for Extended Benefits shall be filed with respect to any Twenty Year Benefit Property or Twenty-five Year Benefit Property (i) before the date upon which such property is in compliance with the Extended Affordability Requirement, or (ii) on or after the later to occur of December 31, 2016 or eighteen months after the Expiration Date.

b. No Twenty Year Benefit Property or Twenty-five Year Benefit Property shall be eligible for Extended Benefits unless it was issued a Final Certificate of Eligibility and such Final Certificate of Eligibility was delivered to the Department of Finance together with an application to the Department of Finance for partial tax exemption.

c. Each application for Extended Benefits must include:

- (1) Evidence satisfactory to the Agency that the Restrictive Declaration in a form satisfactory to the Agency (A) has been executed by the fee owner and any ground lessee of the Extended Affordability Property, (B) has been recorded against the real property containing the Extended Affordability Property, (C) identifies each Affordable Housing Unit in the Extended Affordability Property, the number of bedrooms in such Affordable Housing Unit, whether such Affordable Housing Unit is an Affordable Housing Eighty Percent Unit or an Affordable Housing One Hundred Thirty Percent Unit, and 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 such Extended Affordability Property shall, for the Extended Affordability Period, be (i) rented to eligible tenants at or below the Permitted Rent, and (ii) subject to Rent Stabilization, allowing tenants holding a lease and in occupancy at the expiration of such Extended Affordability Period to continue to be protected by Rent Stabilization for the duration of their occupancy, and (E) provides that such Extended Affordability Property must comply with the Extended Affordability Requirement and all applicable provisions of Section 504 of the Rehabilitation Act during the Extended Affordability Period;
- (2) Evidence satisfactory to the Agency that (A) from the commencement of Post-Construction Benefits up to and including the Commencement Date, each Affordable Housing Eighty Percent Unit was occupied by a household whose income at the time of initial occupancy of such Affordable Housing Eighty Percent Unit did not exceed one hundred percent (100%) of Area Median Income, and that all of the Affordable Housing Eighty Percent Units in such Twenty Year Benefit Property or Twenty-five Year Benefit Property, respectively, were collectively affordable and restricted to occupancy to households whose income at the time of initial occupancy, did not exceed an average of eighty percent (80%) of Area Median Income, and (B) that, prior to the Commencement Date, an additional five percent (5%) of the dwelling units in such Twenty Year Benefit Property or Twenty-five Year Benefit Property, respectively, were designated as Affordable Housing One Hundred Thirty Percent Units and have each been

occupied by a household that was identified on the log established pursuant to Housing Connect and whose income at the time of initial occupancy of such Affordable Housing One Hundred Thirty Percent Unit did not exceed one hundred thirty percent (130%) of Area Median Income;

- (3) A proposed Monitoring Contract; and
- (4) A copy of the notice of intent to begin marketing the Affordable Housing Units through Housing Connect and satisfactory evidence that such notice of intent to begin marketing and the name of the proposed Marketing Monitor was filed with the Agency at least sixty days prior to the date upon which the first lease for an Affordable Housing One Hundred Thirty Percent Unit will be executed. Notwithstanding the foregoing, at the request of HDC or HFA, the Agency may allow the exhaustion of a waiting list for the Affordable Housing Eighty Percent Units maintained pursuant to a regulatory agreement with either HDC or HFA, respectively, prior to commencing the marketing procedures prescribed hereunder; provided, however, that no such waiting list shall be replenished or expanded on or after May 11, 2016.

§49-03 Rent and Income. During the Extended Affordability Period:

- a. The rent for an Affordable Housing Unit shall not exceed the Permitted Rent.
- b. 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.
- c. An Affordable Housing Unit shall be leased, both upon initial rent-up and upon any subsequent vacancy, pursuant to such marketing requirements as may be established by the Agency.
- d. No Affordable Housing Unit shall be held off the market for a period that is longer than is reasonably necessary.
- e. No Affordable Housing Unit shall be offered to a corporation, partnership or other entity.
- f. Each tenancy for an Affordable Housing Unit shall be approved by the Agency prior to execution of the lease.
- g. 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.

§49-04 Hotel Prohibition. No Twenty Year Benefit Property or Twenty-five Year Benefit Property that is operated as a hotel shall be eligible for Extended Affordability Benefits.