



The City of New York
**DEPARTMENT OF HOUSING PRESERVATION
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421-a Legislation Overview and FAQ

This document contains general information about a recently enacted local law and is not intended to provide legal advice or to be relied upon in any way by any person or entity. The provisions of the applicable state law, local law, and rules regarding the 421-a tax incentive program are extremely complex. It is therefore imperative to rely only upon the actual text of the applicable statutes and rules and to consult with an attorney as to their meaning.

On December 28, 2006, the Mayor signed Local Law No. 58 of 2006. This legislation, which contains major reforms to the 421-a tax incentive program, will become effective one year later, on December 28, 2007. The legislation includes the following major programmatic changes:

- **Expands the 421-a geographic exclusion area (GEA).** Developments in the GEA are required to provide affordable housing in exchange for receiving 421-a tax benefits. The current GEA includes Manhattan from roughly 14th St to 96th St. When the new law takes effect, the GEA will expand (see map) to include:
 - all of Manhattan south of 136th Street in Harlem west of 5th Avenue, south of 126th Street from 5th Avenue to 2nd Avenue, north of 124th Street from 2nd Avenue to Park Avenue, and south of 117th Street east of Park Avenue;
 - all blocks immediately bordering the East River waterfront in Queens;
 - all of downtown Brooklyn, Carroll Gardens, Cobble Hill, Boerum Hill, and Park Slope; most of Fort Greene, Prospect Heights, Williamsburg, and Greenpoint; parts of Sunset Park and Bushwick.
- **Eliminates as-of-right 25-year benefits in NPP/REMIC areas.** Only developments that provide on-site restricted income units or receive substantial governmental assistance pursuant to an affordable housing program will be eligible to receive 25-year benefits.
- **Sets a limit on the total amount of 421-a tax benefits that any market-rate unit may receive (AV cap).** Only the first \$65,000 of an apartment's exempt assessed value (AV) will be eligible for the 421-a tax exemption. For units with exempt AV above the \$65,000 cap, owners would pay taxes on the portion of AV above the cap, but would still receive tax benefits for the portion of AV below the cap. This \$65,000 cap will be increased by 3%, compounded annually, on each taxable status date following the first anniversary of the effective date of the new local law. Projects providing on-site restricted income units or receiving substantial governmental assistance pursuant to an affordable housing program would not be subject to the AV cap.
- **Reserves 421-a tax benefits for buildings with a minimum of four units.** Three-unit buildings would no longer be eligible for 421-a benefits unless they are constructed with substantial governmental assistance pursuant to an affordable housing program.
- **Abolishes the negotiable certificate program.** Any property within the GEA must provide affordable housing within the same building in order to receive any 421-a tax benefits. After the effective date of the new law, no new written agreements for negotiable certificates projects will be issued.

- **Creates a Boundary Review Commission.** A Boundary Review Commission with members appointed by the Mayor and Council will reassess the GEA every two years to determine whether the boundaries should be revised. The Commission will issue a biennial report to the Council and the Mayor with recommendations for changes to the GEA or an explanation why no recommendations are being made. The first such report must be made by December 1, 2008.
 - **Authorizes HPD to create a dedicated fund for affordable housing.** The Fund would be used to create affordable housing outside of the GEA, focusing on the 15 highest poverty districts in the City. The initial Fund will be \$400 million, contingent on elimination of the negotiable certificate program.
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Frequently-Asked Questions

When would the changes become effective?

The legislation was signed on December 28, 2006 and goes into effect on December 28, 2007. All local legislation restricting 421-a benefits is subject to a one-year waiting period.

How does the effective date of the new law affect my project?

- Any project that has commenced construction (as defined in the local law) before December 28, 2007 will still be eligible to receive 421-a tax benefits pursuant to the current law. Any project that commences construction on or after that date would be subject to the new 421-a provisions.
- Any project that has entered into a written agreement with HPD to generate negotiable certificates before December 28, 2007 will continue to be able to sell its certificates. There will be no expiration date on certificates generated from those written agreements.

If my project is in the GEA, how can I receive 421-a tax benefits?

Only projects receiving substantial governmental assistance pursuant to an affordable housing program or buildings setting aside at least 20% of their units as on-site restricted income units are eligible for 421-a benefits in the GEA.

What if my project is in the GEA and I have purchased certificates from an affordable housing project that entered into a 421-a written agreement before December 28, 2007?

Any project newly constructed within the GEA that has purchased the requisite number of certificates is eligible to receive 421-a tax benefits after the effective date, but each unit within such a project will be subject to the AV cap if construction commenced on or after the effective date of the legislation.

What is a Restricted Income Unit?

Restricted income units are units that are affordable to and occupied or available for occupancy by individuals or families whose incomes at the time of initial occupancy do not exceed 80% of Area Median Income (AMI), or about \$56,720 for a family of four. The total number of units affordable to families with incomes between 60% and 80% of AMI and which enable projects to receive 421-a benefits is subject to certain limitations.

What exactly is the AV cap and how is it calculated?

421-a is an exemption on the increased value of a property due to construction. An AV Cap is a limitation on the maximum benefit available to a residential unit. The cap limits the maximum AV upon which the exemption is calculated to \$65,000.

The following chart illustrates how an AV Cap affects tax payments:

	per building <i>Without an AV cap</i>	per unit (10 units) <i>Without an AV cap</i> <i>With an AV cap</i>	
Calculation of Exempt AV before AV Cap			
Post-Construction Billable AV <i>(AV of newly constructed building)</i>	\$1,000,000	\$100,000	\$100,000
Pre-Construction AV (Mini-Tax AV) <i>(AV of property in year prior to construction)</i>	<u>\$150,000</u>	<u>\$15,000</u>	<u>\$15,000</u>
Exempt AV (Post-Const minus Pre-Const)	\$850,000	\$85,000	\$85,000
Calculation of AV subject to AV Cap			
Exempt AV without AV Cap	\$850,000	\$85,000	\$85,000
<u>AV Cap (\$65,000 per unit)</u>	<u>n/a</u>	<u>n/a</u>	<u>\$65,000</u>
Exempt AV above the Cap	\$0	\$0	\$20,000
Calculation of AV subject to Taxes			
Pre-Construction AV (Mini-Tax AV)	\$150,000	\$15,000	\$15,000
AV above the Cap	<u>\$0</u>	<u>\$0</u>	<u>\$20,000</u>
Total Taxable AV	\$150,000	\$15,000	\$35,000
First Year of Tax Liability tax rate of 12.737%	\$19,106	\$1,911	\$4,458

During the phase-out periods of the exemption (years 3-10 for the 10-year exemption, years 12-15 for the 15-year exemption, years 13-20 for the 20-year exemption, and years 22-25 for the 25-year exemption), the owner begins to pay increasing portions of the real property tax on the exempt AV.

How does the AV Cap affect non-residential space in my building?

- Any commercial, community facility, or accessory use space that would otherwise be eligible for 421-a and is contained in its own tax lot would be subject to the \$65,000 AV cap.
- Within a tax lot containing both residential units and commercial, community facility, or accessory use space, the non-residential space would collectively be considered as equivalent to a single unit. The AV cap on such a tax lot would be calculated by multiplying (a) the number of residential dwelling units plus one, times (b) \$65,000. I.e:

$$\text{AV Cap} = \$65,000 * (\#DU + 1)$$

What happens if I construct a 3-unit building?

If the building commences construction on or after December 28, 2007, the property will not be eligible for any 421-a tax benefits unless it is constructed with substantial governmental assistance pursuant to an affordable housing program.

What about changes to state law?

Real Property Tax Law Section 421-a will expire on December 31, 2007 unless it is extended by state law. Any state extender may or may not include other revisions to the 421-a tax incentive program. Changes passed by state law could take effect immediately.

How does this affect my Greenpoint-Williamsburg waterfront project?

The Greenpoint-Williamsburg waterfront is subject to different affordability restrictions pursuant to state law and is not subject to any of the changes imposed by this new local law.

For additional information, please contact Kerry Wilbur, Project Manager in the Inclusionary Housing / 421-a Affordable Housing Program, at 212-863-6209.