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HPD Says New 421-a Exemption is Too Generous, Plans To Restrict 421-a Units “Double Dipping” Under Inclusionary Housing Program.

Residential Developers Should Look To Alternative Zoning Programs: Rosenberg & Estis is leading the way in Alternative Zoning Programs.

Industry Update || July 12, 2017

The New 421-a property tax exemption under Real Property Tax Law Section 421-a(16) was signed into law on April 10, 2017 (the “New 421-a”) and already is reshaping residential development in NYC. The New 421-a applies to projects commencing construction from January 1, 2016 until June 15, 2022 and also may be available to projects which commenced construction in 2015 and prior under certain circumstances.

On June 27, 2017, R&E attorneys Daniel M. Bernstein, Frank E. Chaney, Nicholas Kamillatos and Elise J. Kessler presented an important panel discussion on the New 421-a program and the zoning, financing and rent regulatory programs and issues which may allow savvy developers to build larger, taller and better projects with more advantageous economics.

This alert will summarize some of the major issues which were addressed in the June 27th event and that will be of interest to NYC developers and property owners.

New 421-a

What is the New 421-a and what does it do? The New 421-a is a long and valuable property tax exemption for mixed-income rental projects which make 25% or 30% of their units affordable. It is available for small homeownership projects, but with less generous benefits. Without the New 421-a, rental projects can expect to pay approximately 25%-30% of gross rents as property taxes. With the New 421-a, property taxes will largely be frozen at or near pre-construction levels for 25 years, with a smaller exemption in years 26-35.

There are 3 main categories of projects which can qualify for the New 421-a:

I. Rental projects of fewer than 300 units and certain larger rental projects (depending on their location). These projects can receive 35-year 421-a benefits.

II. Small homeownership projects outside of Manhattan with 35 or fewer units, subject to an Assessed Value limit. These projects can receive capped 20-year 421-a benefits.

III. Rental projects of 300 or more units located in an Enhanced Affordability Area (EAA) or 300+ unit projects located elsewhere that elect to follow construction wage requirements. These projects may have three Affordability Options available, must pay a minimum average construction wage ($60 per hour in Manhattan EAA, $45 per hour in Brooklyn or Queens EAA). These projects can receive enhanced 35-year 421-a benefits, have longer affordability restrictions and certain other differences from smaller projects.

R&E is leading the way in advising developers on the New 421-a, including how to switch a project from the old-law 421-a program to the New 421-a Program. If you have a residential project that commenced construction in 2015 or prior and are seeking benefits under the expired 421-a program, please feel free to contact the attorneys below to discuss whether the New 421-a program is a possibility for your project.

HPD Will Amend Inclusionary Housing Program Rules to Eliminate 421-a "Double-Dipping" For Off-Site Projects
In response to the New 421-a's more generous property tax exemption benefits and general incompatibility with condominium and cooperative projects, HPD has proposed amending the Rules of the Inclusionary Housing program to prohibit affordable units that qualify for 421-a property tax exemption benefits from also generating off-site bonus floor area through the Inclusionary Housing program. This means that an affordable housing unit could either receive property tax exemption benefits under the New 421-a program *or* generate off-site Inclusionary Housing floor area – but not both.

We are in the process of verifying with HPD whether this proposed change to the Inclusionary Housing Program would apply only to the Voluntary Inclusionary Housing (VIH) Program or to the Mandatory Inclusionary Housing (MIH) Program as well.

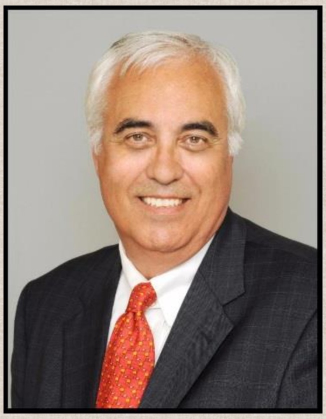
Fortunately for developers, there are alternatives that may still allow New 421-a affordable units to also generate a zoning bonus: on-site Inclusionary Housing (VIH and MIH) and Senior Housing aka Affordable Independent Residences for Seniors. There are also important rent regulatory changes in New 421-a (as compared to the expired 421-a program) that are worth attention.

Inclusionary Housing On-Site
The voluntary Inclusionary Housing program is still available in two areas, R10 (and R10 equivalent) zoning districts and Inclusionary Housing Designated Areas. Mandatory Inclusionary Housing is still required in Mandatory Inclusionary Housing Designated Areas. Developers must satisfy HPD's approval process in order to participate in either Inclusionary Housing program. This means compliance with HPD's strict design, unit size, unit distribution and UFAS requirements and underwriting approval, among other requirements. As long as the affordable units are built on the same site as the market rate units, "double-dipping" is still allowed: i.e., the units can be counted as satisfying the requirements of both the Inclusionary Housing program and the New 421-a tax exemption program.

Senior Housing
In March of 2016, there was a change in the zoning resolution that will allow a developer who may not be able to participate in the VIH program to increase the project's residential floor area. This new option is senior housing, referred to as Affordable Independent Residences for Seniors ("AIRS"). To receive a bonus for AIRS, a project must satisfy certain affordability, age and use requirements. As with on-site Inclusionary Housing, on-site AIRS may also be counted as satisfying the requirements of both the AIRS program and the New 421-a tax exemption program.

Conclusions

The New 421-a program is compatible with several zoning incentive programs and financing programs, including the Inclusionary Housing on-site program, Senior Housing, and various financing programs. Developers and property owners should focus on what the New 421-a may mean for their projects and properties and may want to take advantage of this important tax incentive program.



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