

421-A HIGHLIGHTS

421-A LAW EFFECTIVE JANUARY 1, 2016 FOR BUILDINGS COMMENCING CONSTRUCTION AFTER DECEMBER 31, 2015

Option A	Option B	Option C	Option D (condos only)	Option E	Option F	Option G
<ul style="list-style-type: none"> ▪ 10% < 40% AMI ▪ 10% < 60% AMI ▪ 5% < 130% AMI 	<ul style="list-style-type: none"> ▪ 10% < 70% AMI ▪ 20% < 130% AMI 	<ul style="list-style-type: none"> ▪ 30% < 130% AMI 	<ul style="list-style-type: none"> ▪ No affordability requirement ▪ 35 units and under; excludes entire boro of Manhattan 	<ul style="list-style-type: none"> ▪ 10% < 40% AMI ▪ 10% < 60% AMI ▪ 5% < 120% AMI 	<ul style="list-style-type: none"> ▪ 10% < 70% AMI ▪ 20% < 130% AMI 	<ul style="list-style-type: none"> ▪ 30% < 130% AMI
<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22 	<ul style="list-style-type: none"> ▪ Commence 1/1/16 - 6/15/22
<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26 	<ul style="list-style-type: none"> ▪ Complete 6/15/26
<ul style="list-style-type: none"> ▪ All Buildings other than Wage Buildings¹ 	<ul style="list-style-type: none"> ▪ All Buildings other than Wage Buildings 	<ul style="list-style-type: none"> ▪ All Buildings except (i) Wage Buildings or (ii) located in Manhattan below 96th 	<ul style="list-style-type: none"> ▪ 100% of units have an average assessed value no more than \$65,000 upon 1st year following completion 	<ul style="list-style-type: none"> ▪ Wage Buildings and Opt-in Buildings² Only 	<ul style="list-style-type: none"> ▪ Wage Buildings and Opt-in Buildings Only 	<ul style="list-style-type: none"> ▪ Queens & Brooklyn Wage Buildings and Opt-in Buildings Only
<ul style="list-style-type: none"> ▪ No SGA permitted (e.g., grants, loans) except tax exempt bonds & 4% tax credits 		<ul style="list-style-type: none"> ▪ No SGA permitted (e.g., grants, loans, tax credits) 	<ul style="list-style-type: none"> ▪ Each owner agrees in writing to maintain the unit as their primary residence for at least 5 years from closing 	<ul style="list-style-type: none"> ▪ No SGA permitted (e.g., grants, loans) except tax exempt bonds & 4% tax credits 		<ul style="list-style-type: none"> ▪ No SGA permitted (e.g., grants, loans, tax credits)
<ul style="list-style-type: none"> ▪ 35 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 35 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 35 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 35 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 40 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 40 Year Restriction Period 	<ul style="list-style-type: none"> ▪ 40 Year Restriction Period
<ul style="list-style-type: none"> ▪ 35 Year Benefit: (1) Year Construction Period @ 100%; (2) First 25 years @ 100% of the AV; (3) final 10 years @ Affordability Percentage (# of affordable units / total # of units) 	<ul style="list-style-type: none"> ▪ 35 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) First 25 years @ 100% of the AV; (3) final 10 years @ Affordability Percentage (# of affordable units / total number of units) 	<ul style="list-style-type: none"> ▪ 35 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) First 25 years @ 100% of the AV; (3) final 10 years @ Affordability Percentage (# of affordable units / total number of units) 	<ul style="list-style-type: none"> ▪ 20 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) First 14 years @ 100% of AV capped at \$65,000 AV/unit; (3) final 6 years @ 25% of AV capped at \$65,000 AV/unit 	<ul style="list-style-type: none"> ▪ Enhanced 35 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) 35 years @ 100% of AV 	<ul style="list-style-type: none"> ▪ Enhanced 35 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) 35 years @ 100% of AV 	<ul style="list-style-type: none"> ▪ Enhanced 35 Year Benefit: (1) 3 Year Construction Period @ 100%; (2) 35 years @ 100% of AV
<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax 	<ul style="list-style-type: none"> ▪ Mini Tax

¹Wage Buildings = 300 rental units or more, located in M south of 96th Street, or Q or BK in CBs 1 or 2 and within 1 mile of waterfront ("Enhanced Affordability Area")

²Opt-In Buildings = 300 rental units or more not in Enhanced Affordability Area may opt-in to E, F, G for Enhanced 35 Year Benefit if they comply with minimum wage requirements

421-A LAW EFFECTIVE JANUARY 1, 2016 FOR BUILDINGS COMMENCING CONSTRUCTION AFTER DECEMBER 31, 2015

Applicable to All Buildings:

- Eligible multiple dwelling must be 6 units or more
- Eligible site is either (a) a tax lot containing an eligible multiple dwelling or (b) a zoning lot containing two or more eligible multiple dwellings
- Must commence 1/1/2016 - 6/15/2022
- Must complete by 6/15/2026
- Commencement = NB Permit
- Completion = TCO on all residential units
- Construction Period = later of commencement date or 3 years before completion date; ends on the day before completion date
- Mini Tax = total assessed value of the property during the tax year prior to the commencement date, without regard to any exemption in effect during that year, and multiplying it against the current tax rate
- Application filing fee: \$3000/unit

Enhanced Benefit Opt-In by Non-Wage Buildings

- 300+ unit buildings outside of the Enhanced Affordability Area may elect to opt-in to Affordability Options E, F or G provided they comply with the minimum wage requirement and provisions. These buildings will be considered Brooklyn or Queens Wage Buildings. Election must be made on the application and can't be changed thereafter.

Minimum Wage and Certified Payroll Requirements

- Applicant must hire a CPA (“independent monitor”) to submit to the NYC Comptroller’s office a project-wide certified payroll report within 1 year of completion, which is based upon contractor certified payroll reports, which shall be submitted to the CPA within 90 days of completion of work. These certified payroll reports set forth total numbers of construction work, aggregate amount of wages and employee benefits, and calculates the average hourly wage.
- Failure to timely submit certified payroll reports shall be subject to \$1,000 fine per week, capped at \$75,000.
- If the average hourly wage is less than the minimum wage, the applicant shall pay a 3rd party fund administrator within 120 days of the submission of the project-wide certified payroll report, who then distributes payment to the construction workers
- 3rd party fund administrator receives/disburses the funds to construction workers and is appointed by HPD and “recommended” by REBNY/Building & Construction Trades Council for 3-year term.

421-A LAW EFFECTIVE JANUARY 1, 2016 FOR BUILDINGS COMMENCING CONSTRUCTION AFTER DECEMBER 31, 2015

- **Penalty for noncompliance of Minimum Wage requirements**
 - If the average hourly wage is within 15% of the minimum wage, applicant has 120 days from submission of the project-wide certified payroll report to give an amount equal to the deficiency to the 3rd party fund administrator.
 - If the average hourly wage is more than 15% below the minimum average hourly wage, then the applicant shall be fined an additional 25% of the amount of the deficiency (“25% penalty”), unless the eligible multiple dwelling was subject to a job action that delayed work.
 - An applicant is subject to a \$1,000/week fine capped at \$75,000 for the following: Failure to (a) timely submit certified payroll reports; (b) timely pay the third-party fund administrator the deficiency; or (c) timely pay HPD the 25% penalty.
 - An applicant is not liable for penalties relating to or resulting from contractor fraud, mistake, negligence, etc. but still liable for payment to the third party fund administrator even if the deficiency was caused by the contractor, unless HPD finds in its sole discretion that the deficiency was caused by the contractor’s fraud, mistake, negligence, etc.

Other Notables:

- **The Geographic Exclusion Area, 421-a Negotiable Certificates, and Site Eligibility Test have been eliminated.**
- **Election.** Previously commenced buildings (commenced on or before 12/31/2015) that have not received 421-a benefits yet may elect to comply with any applicable affordability option and receive benefits under the new 421-a law.
- **Building Service Employees / Prevailing Wage.** All building service employees shall receive the applicable prevailing wage during the restriction period. Excludes: buildings with less than 30 units or 100% affordable buildings with at least 50% @ 125% AMI
- **Multiple Tax Lots.** A zoning lot consisting of two or more tax lots may list one or more of such tax lots on an application to determine eligibility for benefits. Benefits for each multiple dwelling shall commence upon commencement of construction of such multiple dwelling. All buildings must be on one application.
- **Replacement Ratio.** If the land on which the new 421-a building is being constructed contained dwelling units within 3 years of the construction commencement date, then the 421-a building must include at least one affordable unit for each prior dwelling unit.
- **Percentage of affordable units and Required Bedrooms.** Either (A) the affordable units shall have a unit mix proportional to the market units, or (B) at least fifty percent (50%) of the affordable shall have two or more bedrooms, and no more than twenty-five percent (25%) of the affordable units shall have less than one bedroom.
- **Rent Stabilization.** All affordable units shall be subject to rent stabilization during the restriction period. However, tenants holding a lease and in occupancy of such affordable housing units at the expiration of the restriction period shall have the right to remain as rent stabilized tenants for the duration of the occupancy, which may go beyond the applicable restriction period. If benefits are terminated/revoked for noncompliance: (i) all RS units remain subject to RS for the restriction period as if the benefits had not been terminated/revoked; (ii) all

421-A LAW EFFECTIVE JANUARY 1, 2016 FOR BUILDINGS COMMENCING CONSTRUCTION AFTER DECEMBER 31, 2015

market rate units remain subject to RS for the restriction period as if the benefits had not been terminated revoked provided market unit can be removed from RS upon vacancy.

- **Rent Stabilization of Market Units.** A market unit shall be rent stabilized unless the monthly rent meets the Deregulation Rent Threshold (\$2700 in 2017).
- **No Conversion of Affordable Housing Units.** An affordable unit shall not be converted to cooperative or condominium ownership.
- **Marketing.** HPD will issue rules for marketing and monitoring compliance of the affordable units.
- **Severability Clause.** If any portion of the law is struck down, the unaffected portions of the law shall remain.

Practitioner's Tip in calculating affordable rents:

<http://www1.nyc.gov/assets/hpd/downloads/Excel/rent-sale-calculator-421-a.xlsx>

or visit:

<http://www1.nyc.gov/site/hpd/developers/tax-incentives-421a.page>

scroll to the bottom of the page, click on "NEW Rental and Homeownership Affordability Calculators"

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