

**REPORT ON LEGISLATION BY THE
HOUSING & URBAN DEVELOPMENT COMMITTEE,
LAND USE PLANNING & ZONING COMMITTEE,
AND REAL PROPERTY LAW COMMITTEE**

Intro. 1359-2016

A Local Law to amend the Administrative Code of the City of New York, in relation to auditing buildings for compliance with the affordability requirements of the 421-a tax exemption program

Intro. 1366-2016

A Local Law to amend the Administrative Code of the City of New York, in relation to auditing buildings for compliance with the rent registration requirements of the 421-a tax exemption program

THESE BILLS ARE APPROVED WITH MODIFICATIONS

The New York City Bar Association (“City Bar”), through the Housing & Urban Development Committee, the Land Use Planning & Zoning Committee, and the Real Property Law Committee (collectively the “Committees”), reviewed Intro. 1359-2016 and Intro. 1366-2016 (the “Local Laws”) and strongly supports greater oversight of projects receiving a Real Property 421-a tax exemption. However, the City Bar has four primary concerns regarding the Local Laws as presently proposed.

INTRODUCTION

Both Local Laws have been introduced by the New York City Council to rein in potential abuses of the 421-a tax exemption as it relates to the statute’s requirements to provide affordable and/or rent-regulated housing. Concerned that developers who receive the 421-a tax exemption do not provide and maintain the required affordable or rent-regulated units, the Local Laws seek to impose annual audits of buildings that receive a 421-a tax exemption and that must either set aside affordable and/or maintain rent-regulated units. This report provides the position of the Committees regarding both Local Laws.

DISCUSSION

1. Need To Allocate Additional Resources To Prevent Administrative Delays

The Local Laws will significantly increase the workload of the auditing agencies, and the City Bar urges the City Council to allocate additional resources to minimize consequent

administrative delays. The Local Laws mandate that the New York City Department of Housing Preservation and Development (“HPD”) conduct an annual audit of at least 20 percent of all buildings receiving the 421-a tax exemption. Further, under the Local Laws, the sole remedy for addressing violations uncovered during the annual audit is the revocation of the tax exemption by the New York City Department of Finance (the “DOF”). As there are thousands of buildings receiving the 421-a tax exemption, this audit requirement would significantly increase the workload for both HPD and DOF. The City Bar is, therefore, concerned that the Local Laws will create administrative delays, unless the agencies administering the audits have the adequate staff and resources.

2. Need To Coordinate Proposed Auditing With Current Enforcement Efforts

The potential impact of the Local Laws on the present enforcement efforts by city and state agencies,¹ regarding non-compliance with the 421-a Program, should be further examined. As recently as December 6, 2016, HPD and DOF notified more than 3,000 landlords of pending revocations, urging all owners to complete their final benefit application and demonstrate compliance with the rent registration requirements as a way to avoid revocation.²

The City Bar recommends that the Committee on Housing and Buildings convene a meeting of the relevant city and state agencies to ensure the Local Laws do not conflict with the on-going inter-governmental enforcement efforts, and that the Committee specifically examine HPD’s verification of rent regulation, which is the responsibility of the HCR.

3. Need For Tailored Remedies

As presently drafted, the revocation of benefits is the sole remedy for non-compliance under the proposed Local Laws. The City Bar believes that revocation as the sole redress for non-compliance limits other viable and effective solutions. As noted above, city and state agencies have already begun to address non-compliance with the 421-a Program, and these efforts have resulted in voluntary compliance without resorting to revocations. For example, in 2015, the city and state agencies announced the return of more than 1,800 apartments to rent regulation without revoking benefits.³ If revocation of benefits were the sole remedy for non-compliance, the effectiveness of the ongoing inter-governmental enforcement efforts may be curtailed.

¹ This inter-agency enforcement effort is being led by HPD, the New York State Division of Homes and Community Renewal (“HCR”), the New York City Comptroller’s office, and the New York State Attorney General’s office (“NYAG”).

² Press Release: “Mayor de Blasio, DOF and HPD Announce Suspension Notices Sent to Owners of 3,000 Rental Buildings Out of Compliance with 421-A,” Dec. 6, 2016, *available at* <http://www1.nyc.gov/site/hpd/about/press-releases/2016/12/12-06-16.page> (all pages last visited March 9, 2017).

³ Press Release: “A.G. Schneiderman, Governor Cuomo, Mayor De Blasio, And State And City Housing Agencies Announce Return Of More Than 1,800 Apartments To Rent Stabilization Through Settlements With Landlords And Participation In Real Estate Tax Compliance Program”, Dec. 3, 2015, *available at* <https://ag.ny.gov/press-release/ag-schneiderman-governor-cuomo-mayor-de-blasio-and-state-and-city-housing-agencies>.

Moreover, HPD has already promulgated extensive regulations that standardize the process for partial and total revocation, reduction, termination, or cancellation of tax benefits. These regulations also ensure due process prior to the loss of benefits. *See* 28 RCNY §§ 39-01 through 39-06. Rather than mandate full revocation as the sole means of addressing non-compliance, the City Bar believes it is necessary to preserve the existing revocation procedures, which are critical to the ongoing inter-governmental enforcement efforts and, more generally, needed to ensure the imposed remedy is effective. Given the existing regulatory procedures and enforcement efforts, it may be more appropriate for the City Council to request annual reports of compliance efforts and revocation proceedings, and the results therefrom, instead of mandating a single remedy that may not be the most effective solution in every instance.

4. Need To Prevent Potential Conflicts With The Revised 421-A Statute

Lastly, in November the Governor announced an agreement to renew the lapsed 421-a statute.⁴ Given that the new application process may substantially differ from the prior process, the City Bar recommends that the City Council make the Local Laws applicable only to applications filed to date. This would ensure that the Local Laws do not conflict with any new version of the 421-a Program (renamed “Affordable New York”), particularly insofar as the proposed renewal legislation currently includes its own mandatory reporting and auditing requirements for certain projects.

CONCLUSIONS AND RECOMMENDATIONS

The City Bar believes that the 421-a Program provides a much-needed tool to spur residential development in New York City and build critically needed affordable units. While annual audits can be an effective way to ensure that developers and landlords are carrying out their end of the bargain, the Local Laws in their current form raise several concerns.

As set forth above, we believe the proposed auditing procedures are only workable if HPD and DOF are allocated the necessary resources to step up monitoring and enforcement efforts. We also believe that these Local Laws, as written, may curtail the effectiveness of ongoing inter-governmental enforcement efforts by mandating revocation as the sole tool for remediating non-compliance. Before proceeding with the Local Laws, the Committee on Housing and Buildings should convene a meeting of the city and state agencies that are working on 421-a non-compliance to ensure that the Local Laws do not have unintended consequences. The City Bar is also concerned that, as drafted, the Local Laws would appear to limit HPD’s use of its own regulations and procedures governing revocation, which allow HPD to tailor the remedy to the situation at hand, rather than requiring full revocation of benefits in all instances. Finally, the City Bar believes that the Local Laws should only govern applications filed to date and that the prospective application of the Local Laws should be avoided until the terms of Affordable New York are finalized.

⁴ Press Release: “Statement from Governor Andrew M. Cuomo on Agreement Reached by REBNY and the Building Trades,” Nov. 10, 2016, available at <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-agreement-reached-rebny-and-building-trades>.

In conclusion, the City Bar fully supports the Local Laws' intent to strengthen compliance with the rent regulation and affordability requirements of the 421-a Program. However, the City Bar recommends that the City Council consider modifications to the proposed Local Laws to ensure that the proposed auditing procedures do not create administrative delays, do not interfere with ongoing enforcement activities, and allow for tailored remedies.

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