

**Testimony of Alicia Glen, Deputy Mayor for Housing and Economic  
Development  
Committees on Housing and Buildings, New York City Council  
A Review of the 421-a Tax Benefit Program and Mansion Tax Proposal  
June 1, 2015**

Chairman Williams and Members of the Committee, thank you for the opportunity to testify on the Administration's proposal to reform and improve the 421-a program. I am Alicia Glen, Deputy Mayor for Housing and Economic Development. I am joined today by Vicki Been, Commissioner of the Department of Housing Preservation and Development, and Gary Rodney, President of the Housing Development Corporation.

While the focus of today's hearing is 421-a, it's important that this program is understood within the larger context of the Mayor's ambitious *Housing New York* plan to create and preserve 200,000 units of affordable housing.

Housing is the number one expense for the vast majority of New Yorkers. It doesn't matter if you're a busboy, a banker or a teacher, housing is fundamental to a person's life—to their identity, to their economic security and to their sense of possibility. We are at a turning point in New York City's history where that fundamental building block of what defines a person's or a family's ability to succeed is under real threat for millions of New Yorkers.

This crisis also threatens our long-term economic growth and competitiveness, since our economy is fueled by the diversity in people, communities, and businesses that has long been New York City's hallmark.

In short, if we want a city that is diverse, inclusive, and fiscally sound—a city of real opportunity and innovation—then there is no more important work than securing affordable housing.

**NEW YORK CITY'S HOUSING CRISIS**

We are literally in a "housing emergency," the Census Bureau has found, with an official citywide vacancy rate of under three and a half percent. It is a crisis across the board—simply to keep up with population growth, we expect the city will need to add 160,000 units of market rate housing in addition to the 200,000 affordable units in our Plan over the next decade. But the market is tightest at the low end—1.8% vacancy for units with asking rents under \$800.

That's a direct result of a drastically shrinking supply of affordable housing. New York has lost 250,000 rent regulated units since decontrol began in 1994, and at least 25,000 units since the 2011 state rent regulation reforms. This turnover has had real consequences for the City's families, especially given how rents and utility costs have risen while real wages have declined.

Our latest data shows that 56 percent of rental households are rent-burdened in New York City, spending more than 30 percent of their income on housing—worse than last year, and up more than 15 points in the last fifteen years. While the affordability gap is particularly acute for low income households, our critical workforce—our nurses and school teachers and first responders—is also feeling the pressure of rising rents.

And there is growing income inequality in both the highest income and the lowest income neighborhoods, which limits some families' access to the education, jobs, and other opportunities that make New York City a beacon to the rest of the world.

### **HOUSING NEW YORK PROGRESS TO DATE**

I'm pleased to share with you a few highlights of how we've been tackling this crisis by executing on our Plan on all fronts, and at record rates.

Together, we doubled the capital budget for housing with a \$7.2 billion commitment that will leverage \$32 billion or more in private and other public investment to produce more units for a broader range of New Yorkers. We also added human capital so we could actually implement and execute the Plan.

Fueled by these investments, we exceeded our CY14 goal of financing the creation and preservation of new affordable units by almost 1,400 units. We financed more than 17,300 affordable units, enough to house nearly 42,000 New Yorkers. And 85% of our calendar year 2014 units were for families with incomes roughly between \$23,350 and \$67,000.

Overall, we are serving a wider range of New Yorkers than ever before, from households at the lowest incomes to middle class families whose housing needs are not being met by private market development, as well as our most vulnerable populations—creating more housing options for the homeless, seniors, and individuals with disabilities.

And as we work to create and preserve affordable housing we're also cracking down on tenant harassment, and increasing protections for

residents. In February, the Mayor made two important announcements. First, the Mayor announced a \$36 million commitment to protect New Yorkers against harassment from their landlord. This means that in any of the areas in which the city rezones, if the City finds evidence that tenants are being harassed, we will supply those tenants with legal representation, at no cost, to take their case to Housing Court. Second, in conjunction with the Attorney General and the Governor, we launched a joint enforcement task force, titled the Tenant Harassment Prevention Task Force, to investigate and bring enforcement actions – including criminal charges – against landlords who harass tenants.

The final point I'd like to make about the Housing Plan – and this relates to our approach for 421-a as well – is that to accomplish our development goals we've set out to get the best possible value for the public. We've worked with the City Council to scrutinize deals, such as the one at Domino Sugar Factory, to get every possible affordable unit we can, and we'll continue to do so. While we are developing our citywide mandatory inclusionary zoning program – which will for the first time require a developer to include permanently affordable housing as part of any residential project in a rezoned area – we are negotiating more affordability out of individual inclusionary housing projects. We worked closely with the Council to approve the first-ever mandatory inclusionary housing project in the City, Astoria Cove, which will be 27% affordable— mostly to families earning less than \$62,150 annually.

Of course, in order to reach our goal of 200,000 units in 10 years, we will need leadership in Albany. This means stronger rent laws, which the Mayor and I have called for as a foundational protection for longtime tenants who are facing rapidly rising rents, and are being pushed out of their own neighborhoods. Our proposed rent reform law calls for ending vacancy decontrol, eliminating the vacancy bonus, and making improvement surcharges temporary instead of permanent – actions which will both stem the loss of regulated apartments and keep those in stabilization affordable to tenants.

But stronger rent laws will only protect families who already have affordable housing. We also must use every tool we have to build new affordable housing. That means it is time for fundamental reforms to 421-a. Today, 421-a simply does not produce enough affordable housing to justify its expense. The benefit is available citywide, although affordable housing is only required in 16.5% of the city.

Let me underscore that point: In over 83% of our city, developers can receive a substantial tax benefit in exchange for building without a single unit of affordable housing. And – even where affordable housing is required – no more than 20 percent of housing must be affordable, and it only reaches people at a single income band, 60% of AMI.

I want to be 100 percent clear. The administration firmly believes a straight extender of the current program is unacceptable. It will continue to stick New York City with the bill for billions of dollars in return for projects that produce little or no affordable housing. Unless we come together as a city with one voice, and demand that Albany fix this broken program, a straight extender is a real threat. That is an indefensible outcome.

### **ABOUT OUR PROPOSED 421-A REFORMS**

After many, many months of consultation with advocates, elected officials, policy experts, and industry leaders, we are proposing substantial changes to the program to accomplish several key objectives: (i) produce more affordable housing; (ii) promote the economic diversity of our neighborhoods by equitably serving households at a broader range of incomes, including Very Low Income New Yorkers; (iii) lower the cost per affordable unit; (iv) help ensure tenants in existing 421-a affordable apartments are protected; (v) use incentives wisely to create more good-paying jobs; and (vi) raise dedicated revenues for affordable housing through a mansion tax.

Let me go through each of these components in more detail.

First, our proposal would require affordable housing in all areas of the city. The current 421-a program only requires affordable units in the Geographic Exclusion Area (GEA), which encompasses just 16.5 percent of the city. The artificial boundary lines of the GEA cannot keep pace with changing market conditions. And more importantly, we should not be drawing arbitrary lines to tell us which neighborhoods in our city require affordable housing. We believe EVERY neighborhood deserves affordable housing. Bottom line: No more tax breaks anywhere without building affordable housing everywhere. Period.

We will also move beyond the current 80/20 structure to require either 25 or 30% of all units to be affordable in every development, and will push for even more, or deeper, affordability when other city subsidies are given to a project.

Second, we propose a wider range of affordability so 421-a can serve families earning a broader range of incomes – from Very Low to Middle Income

households. We have created a menu of options that balances the number of units that will be affordable with the depth of the affordability. Developers will select one of three options depending on their view of market conditions and the specifics of their project.

Our reforms ensure that different incomes do not mean unequal treatment. We propose to eliminate the provisions that allow for buildings to have two separate entrances based solely on the income of tenants. The era of the poor door is over. Every tenant in every building receiving this tax benefit will be treated fairly and with dignity.

Third, we aim to lower the cost per unit. To this end, we propose eliminating the 421-a benefit for condos, which we all know is among the program's most wasteful aspects. The City has foregone well more than \$1 million in tax revenue for every affordable unit generated through the condo program, which I think we can all agree is an exorbitant cost. High-rise luxury condo towers in Manhattan simply do not deserve a tax exemption.

Currently, 421-a benefits last up to 25 years, despite a requirement that affordable units remain so for 35 years, triggering the need for additional subsidies for the affordable units at the end of the benefit term to keep those units in good financial and physical health. Our proposal will eliminate the need for these additional subsidies by properly aligning the length of the 421-a tax benefit to the full 35-year term of affordability. Projects would receive a 35-year tax exemption, the final 10 years of which will be at a reduced benefit equal to the percentage of affordable units in the building. For example, a building that is 25% affordable will receive 25% of a benefit in the final 10 years.

Fourth, we propose a new mechanism to help protect the affordable apartments within existing 80/20 buildings. Our preservation option for buildings built under 421-a prior to 2008 would help buildings with 20 or 25-year benefits remain affordable for 35 years. In return for this incentive, these buildings will need to increase their percentage of affordable units to 25 percent, and apply rent regulations to all those units. This mirrors our approach across the city, as we use every tool to safeguard affordable apartments within Mitchell Lama developments, older HUD-financed buildings, and older tax credit projects that are reaching the end of their affordability regimes.

In addition, we will expand the prevailing wage requirement for building service workers, mandating this wage scale in buildings with 30 units or more, instead of the current 50-unit minimum, as well as in buildings that are

anything less than 100% affordable. This means security guards, doormen, mechanics and custodians – many of whom would otherwise make unsupportable low wages – will now earn wages that can support a family. And we can accomplish this without jeopardizing the production of affordable housing this is vital to thousands of families.

Finally, as the Committee may be aware, our 421-a proposal includes another essential initiative: a mansion tax. As we've testified in the past, the *Housing New York* plan identifies a \$1.9 billion funding gap that must be overcome to reach 200,000 affordable apartments. So as part of our 421-a proposal, we are also proposing a tax on the transfer of high value homes, revenue from which will be put in a "lockbox" that can be used only to build and preserve affordable housing.

The one-time tax would apply to luxury homes trading at \$1.75 million or above, representing the most expensive 10 percent of sales in 2014. Revenue from this Mansion Tax will be put in a "lockbox" that can be used only to build and preserve affordable housing. The one-time tax would be graduated, at 1% on home sales between \$1.75 million and \$5 million, and a 1.5% tax on sales over \$5 million. This helps ensure that those who can afford to purchase the most expensive 2% percent of homes pay more.

This proposal is projected to raise \$180 to \$200 million in the first year alone, bridge the financial gap the Housing Plan identified, and provide for 37,000 affordable apartments over the next decade—enough to house 95,000 people—which, coincidentally, is roughly the entire population of Albany.

### **IMPACT OF OUR PROPOSED REFORMS TO 421-A**

These changes will have significant impact:

- Under our proposed 421-a program, we project the creation of 25,500 new affordable units for a range of incomes over the next ten years – enough to house 65,000 New Yorkers, almost double what we would expect if the current program were to be extended without reform.
- All residential development will include affordable housing onsite, which helps to ensure that our neighborhoods have the economic diversity so critical to preserving the City's character and competitiveness.
- 421-a will serve a wider spectrum of New Yorkers, including, for the first time, Very Low-Income families, who earn as little as \$31,000 for a family of three – well below the current income ceiling of \$46,600.

- Ending the benefit for condos will result in billions in savings of that will be freed up for affordable housing, infrastructure, and other critical needs of our neighborhoods.
- The average 421-a expenditure needed to build an affordable apartment will be reduced by a third, from an average of \$573,000 per unit down to an average of \$391,000, in today's dollars.
- Our expansion of the prevailing wage provisions would provide additional jobs for building service workers at good wages.
- Our mansion tax proposal would provide funding for 37,000 affordable apartments over the next decade.

Finally, I want to take this opportunity to reiterate how critical it is that, as the State Legislature considers 421-a reform, it also passes a reauthorization and significant strengthening of our rent laws to make sure that the one million rent-stabilized apartments in our city can remain affordable to the more than two million people living within them. Our 421-a and rent regulation proposals work hand in hand to both protect and create the affordable housing New Yorkers need.

As we work at the State level to enact these critical reforms, we hope to be able to count on your support. I believe the de Blasio administration shares the same goals as the City Council – to ensure that our tax expenditures and related programs are efficient, effective, and result in the affordable housing and diverse, strong neighborhoods New Yorkers deserve.

Thank you again for the opportunity to testify.

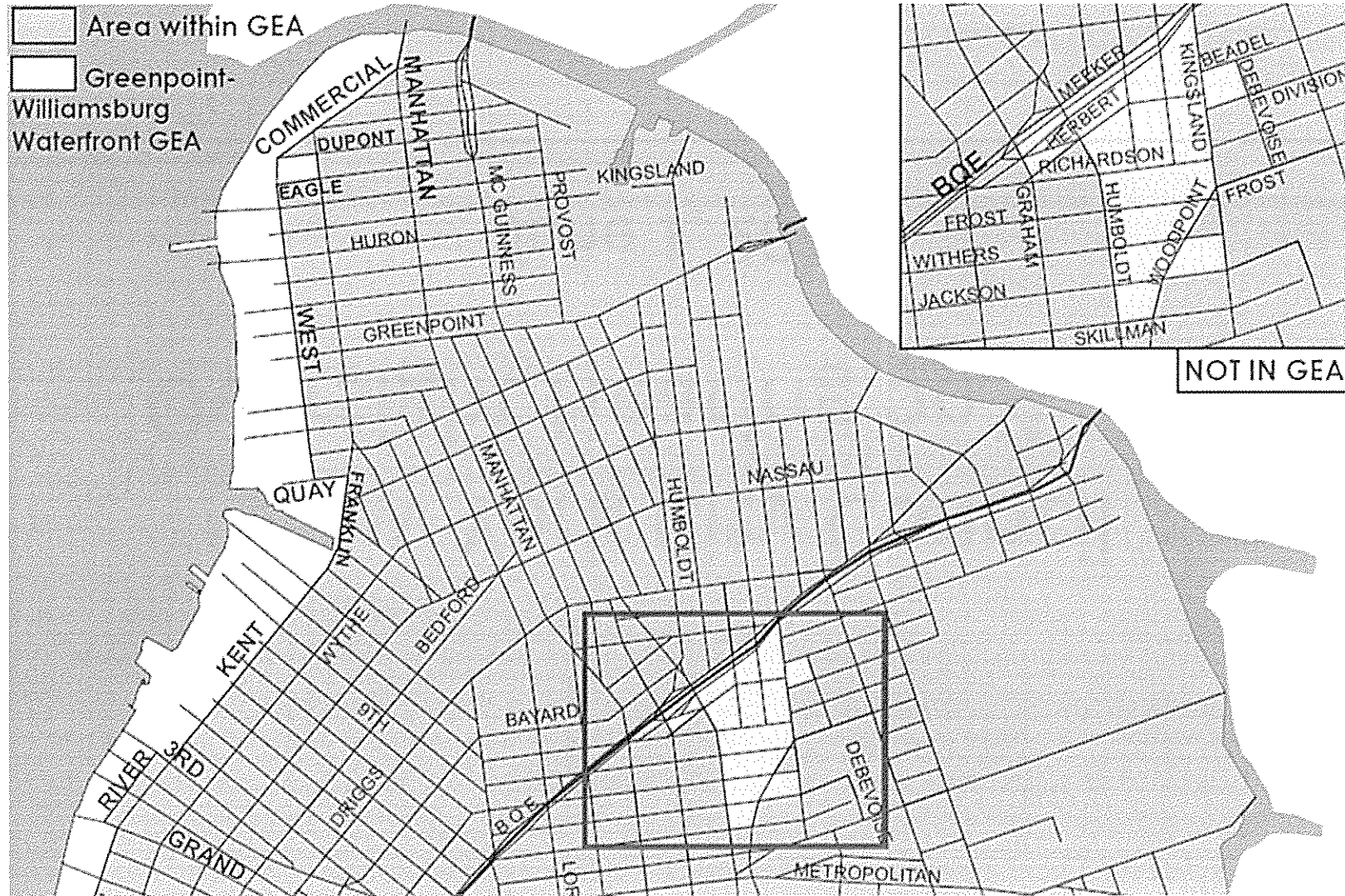


# New York City Council Oversight Hearing on 421-a

June 1, 2015









# Example of GEA Inefficiencies



# NEW YORK CITY 421-A GEOGRAPHIC EXCLUSION AREAS (GEA)

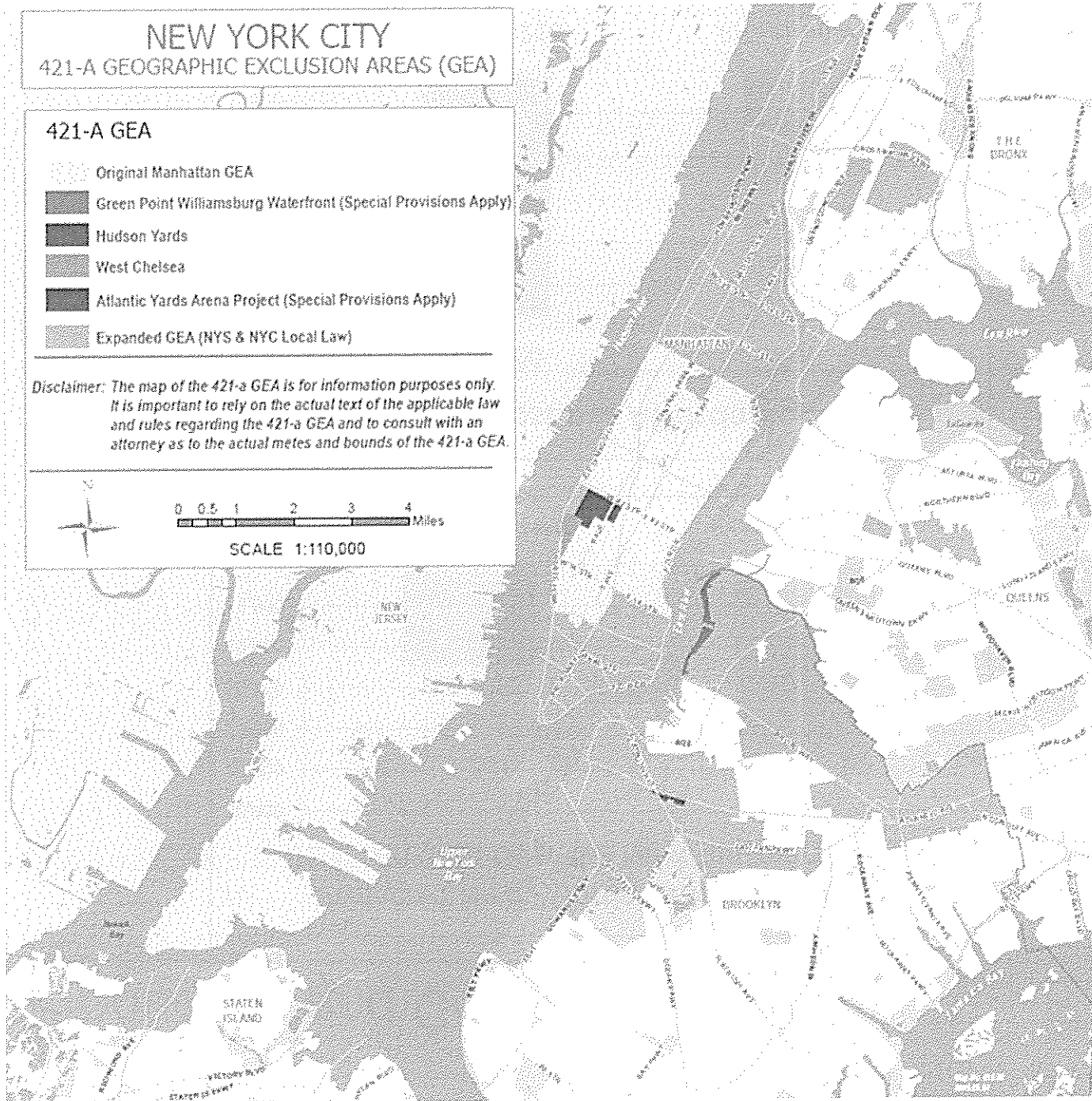
## 421-A GEA

-  Original Manhattan GEA
-  Green Point Williamsburg Waterfront (Special Provisions Apply)
-  Hudson Yards
-  West Chelsea
-  Atlantic Yards Arena Project (Special Provisions Apply)
-  Expanded GEA (NYS & NYC Local Law)

*Disclaimer: The map of the 421-a GEA is for information purposes only. It is important to rely on the actual text of the applicable law and rules regarding the 421-a GEA and to consult with an attorney as to the actual metes and bounds of the 421-a GEA.*

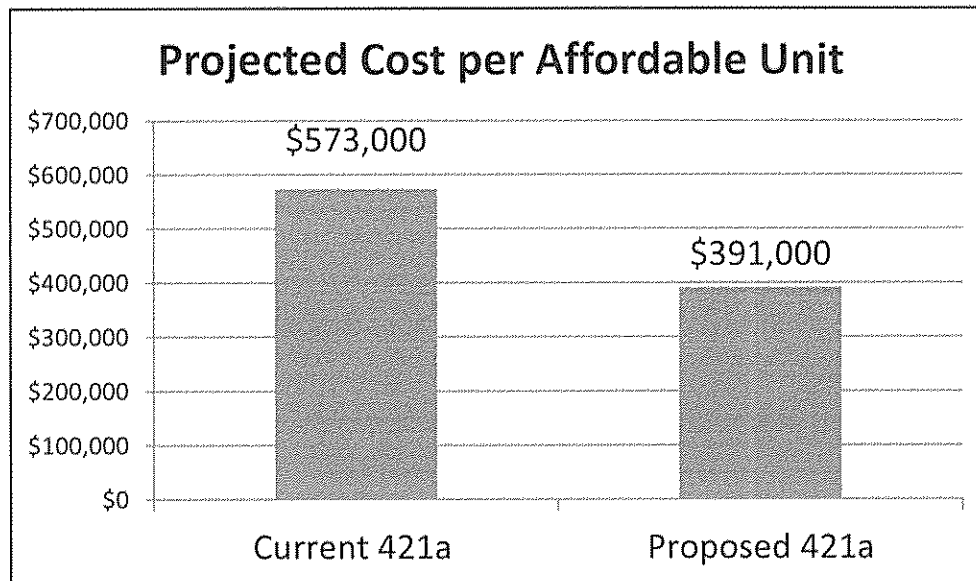
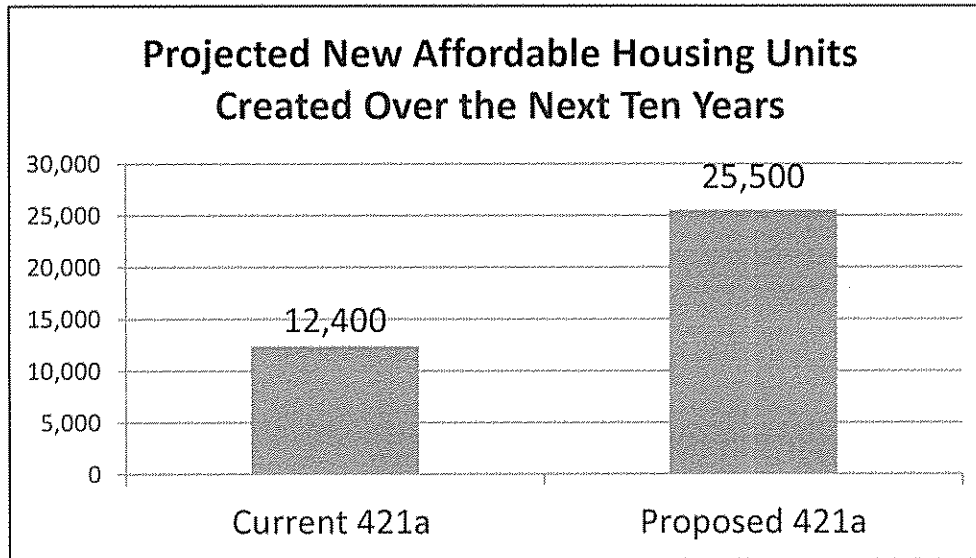


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# Production and Cost Projections

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## Straight Extender versus Reform Package

	Extender	Reform Package
Number of Affordable Units Over 10 Years	12,400	25,500
Lowest Incomes Reached	\$46,600	\$31,080
Subsidy Per Affordable Unit	\$573,000	\$391,000
Affordability Requirement	16.5% of the City	100% of the City
Tax Benefits for Luxury Condos	Yes	No
Separate Entrances Based on Income	Yes	Banned
Prevailing Wage	Service workers in buildings larger than 50 units	Service workers in buildings larger than 30 units



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Gale A. Brewer, Borough President

**Gale A. Brewer, Manhattan Borough President  
Testimony for the Committee on Housing and Buildings  
On the Mayor's Proposed Amendment to 421-a  
June 1, 2015**

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Good morning. My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Chair Williams and the members of the Housing and Buildings Committee for the opportunity to testify today on Mayor Bill de Blasio's proposal regarding the 421-a Tax Benefit Program.

Since my testimony on the 421-a program before the committee on January 29, 2015, Mayor de Blasio has announced his proposal for 421-a reform. The proposal calls for a higher percentage of affordable units for 421-a projects and for these affordable units to be made available to households within a wider range of annual income levels. Additionally, the proposal also includes a number of items such as prohibiting the eligibility of "Poor Door" developments, eliminating the benefit for condominium constructions, instituting a City Mansion Tax on the sale of high-value homes, and applying the affordability requirement city-wide.

I am pleased to see the Mayor's deep commitment to the development of affordable housing and stand ready to work with the Administration toward making New York City an affordable place to live in for families across all income levels.

With that said, there remain several areas of concerns to the 421-a tax benefit that need to be addressed for the program to continue. The 421-a tax benefit program as it currently stands should not be allowed to continue without these changes.

- 1) **End "Double-Dipping" or Overlapping Subsidies.** Units built to satisfy the affordable housing requirements of 421-a must not be available to be counted toward satisfying the requirements of a second subsidy program. Owners should not get two subsidies for one unit.

I applaud Mayor de Blasio's commitment to increase the percentage of affordable units for 421-a projects with affordable housing requirements located within the GEA, which is all of Manhattan. Ending double-dipping is essentially a similar call to ensure all affordability requirements are maximized—the elimination of double counting units to fulfill multiple subsidy programs would necessitate developers to commit to a higher number of affordable units in order to leverage the same kinds of subsidies—but with the added assurance that, whether at 20% affordability or 50%, no affordable unit is "lost" to double counting to secure more than one subsidy.

- 2) **Required Affordable Apartments Must Be Calibrated To Area Median Income (AMI) Ranges Affordable to the Local Community.** We need to ensure 421-a subsidized

apartments are affordable to local residents. This may require offering rental units at levels well below the program's current requirement of 60% to 120% of AMI.<sup>1</sup>

This goal is in the same spirit as the Mayor's call to make affordable units available to households with annual income starting at \$31,000 as opposed to the current level of approximately \$46,000 per year. Like Mayor de Blasio, I also see a need for more housing offered at rents that are affordable for a mix of income ranges, from the very low income to moderate-income households.

The focus of offering affordable housing to a wider range of AMIs must start with those falling within the lowest income bands, often closer to a neighborhood's actual median income level. A 421-a project with on-site affordable units would likely use rental income from market rate or higher-rent units to cross-subsidize the operating costs for units designated for the very low income. For example, an 80% AMI unit can "balance out" the operating cost of a 30% AMI unit, as opposed to having two 60% AMI units that are unaffordable to local residents earning the neighborhood median income. The result will be a building with a range of affordability, making a 421-a project accessible to more than one narrowly defined income group.

**3) Permanent Affordability.** Affordable units developed using 421-a subsidies must remain affordable in perpetuity, either via Rent Stabilization Law or regulatory agreements.

The Mayor proposes to "align the length of the 421-a benefit to the 35-year term of affordable units." What will happen in Year 36? While any extension of affordability is positive, true neighborhood stability will only result from permanent affordability.

**4) Transparency/Data Collection.** I have continuously called for transparency for all projects receiving 421-a tax benefits. Any reform to 421-a must include the requirement that comprehensive data be collected, maintained and made publicly available, tracking each project that receives 421-a benefits. Only then can it be determined whether the subsidies are effective and serving the program's purpose.

In addition to items related to affordability under the Mayor's proposal, I would like to commend the Administration's commitment to eliminate "Poor Door." However, this commitment cannot only be applied to new programs moving forward. We must also revise our current zoning text for the voluntary program. This is the only regulatory framework we currently have and the one that will continue to apply to voluntary inclusionary housing. I look forward to working with the Administration and City Council to achieve this objective.

Thank you for the opportunity to testify at today's hearing. I look forward to continue working with the Administration and with members of the Housing and Buildings committee to extend and preserve affordability to all New Yorkers.

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<sup>1</sup> If a project within the GEA receives substantial government subsidies, then 1) buildings with 25 or fewer units must be at or below 120% AMI, or 2) buildings with more than 25 units must be at or below 120% of AMI and cannot exceed an average of 90% AMI. Rental projects outside of GEA must be at or below 80% AMI.

**Testimony Submitted by  
Judi Kende  
For the Committee on Housing and Buildings**

**Oversight Hearing – The Mayor’s Proposed Amendments to the 421-a  
Tax Benefit Program: City-Wide Affordable Housing,  
Deeper Affordability, and a Mansion Tax**

**On behalf of  
Enterprise Community Partners, Inc.**

***Introduction***

Thank you Chair Williams and members of the Committee on Housing and Buildings for the opportunity to testify on behalf of Enterprise Community Partners, Inc. (Enterprise) in support of the Mayor’s proposals on the 421-a tax abatement program and the creation of a city-levied mansion tax to fund affordable housing programs.

Enterprise brings opportunity to low- and moderate-income communities nationwide through safe, healthy affordable housing. Since 1987, we have created or preserved 44,000 affordable homes for 114,000 New Yorkers and invested \$2.9 billion in equity, grants, and loans to community development projects throughout the city.

As a non-profit affordable housing organization, we support the Mayor’s proposals on 421-a and a mansion tax. We believe these changes will bring much needed resources to help low- and moderate-income New Yorkers find stable, affordable housing. Equally important, the current 421-a program is not appropriately structured to help meet the needs of the New Yorkers and therefore must be amended.

***The Need for Reform***

New York City is in the midst of a housing insecurity crisis, with over 600,000 people spending more than half of their income on rent. These families are on the brink, living one unexpected expense, one missed paycheck, or one super storm away from homelessness. Given this crisis and the diminishing level of federal support for affordable housing and community development, we need to use every public dollar efficiently and leverage as much private funding as possible.

The current 421-a tax abatement program is inefficient and does not produce enough affordable housing. The Mayor’s proposal outlines a plan to produce more units at a lower cost to taxpayers. By removing the Geographic Exclusion Areas and requiring affordable housing in any development claiming the exemption and increasing the affordability requirement, this plan will help double the number of affordable units produced to 25,000 over the next decade.



We also support the proposed elimination of the 421-a tax exemption for condominiums and coops. We support homeownership opportunities for low- and moderate-income households, and encourage the city and state to explore new programs and reinvigorate existing programs that meet this goal. However, 421-a is not an efficient way to spur these opportunities.

***In Support of the Mansion Tax***

The proposed mansion tax would produce \$1.9 billion for affordable housing preservation and creation over the next decade, responsibly filling the funding gap in the city's housing plan through a transfer tax on the top end of the luxury market. Wealthy homeowners already benefit disproportionately from the largest housing subsidy program, the Mortgage Interest Deduction. Additionally, economic development has led to increased property values, which also benefits homeowners.

The solution to housing insecurity is affordable housing, and we know that it is a smart investment. Affordable housing brings jobs and other forms of investment to neighborhoods. Additionally, research shows that the benefits of living in stable affordable housing are manifold, from health to economic outcomes.

It is for these reasons – the growing housing insecurity crisis and the multiplier benefits of affordable housing – that we urge the City Council to support the Mayor's proposed reforms to 421-a and the creation of a mansion tax.





**Habitat**  
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New York City

**FOR THE RECORD**

**Testimony of Habitat for Humanity New York City**

**To the New York City Council Committee on Housing & Buildings**

**Oversight: The Mayor's Proposed Amendments to the 421-a Tax Benefit Program:  
City-Wide Affordable Housing, Deeper Affordability, and a Mansion Tax**

**June 1, 2015**

**Testimony respectfully submitted by:**  
Matthew Dunbar  
VP, Government Relations & Advocacy  
Habitat for Humanity New York City

Good afternoon. My name is Matthew Dunbar, VP of Government Relations and Advocacy with Habitat for Humanity New York City. I want to begin by thanking Chair Williams and the full Committee on Housing & Buildings for the invitation to testify on the Mayor's proposed amendments to the 421a Tax Benefit Program.

The Mayor's plan to build and preserve 200,000 units of affordable housing is critical in serving the more than half of New Yorkers currently living under a housing burden, paying more than they can afford in rent. Reaching this goal is going to require investment and partnership between the public and private sectors while at the same time ensuring that limited public resources are properly stewarded and utilized for maximum public benefit.

With this in mind, Habitat for Humanity New York City has been advocating for the mending or ending of the 421a program as it has not yielded enough affordable housing to justify the amount of public funds invested in the program. We recently brought family partners, volunteers, and donors to Albany to advocate for the reform of this program. We sought to see the program include expanding the General Exclusion Area citywide, increasing the percentage of affordable housing required to access the benefit, and deepening the affordability of those served to provide housing for lower income families.

Habitat NYC congratulates the Administration on the Mayor's 421a proposal as it does address all three of these areas of concern and puts a formal end to the "poor door" segregation of tenants in affordable units. We support the increased investment in our City's affordable housing landscape and the intentions to maximize the public benefit in future development and land use. Public funds should result in public benefit and those seeking to access 421a should be required to build more affordable housing for lower-income New Yorkers as a result.

The Mayor's proposal is a good start to making the 421a program more effective, yet we know more can be done to serve lower income New Yorkers. Habitat urges the City and State to do all in their power to reform the program in ways that will serve Extremely Low Income New Yorkers and extend the affordability terms to preserve the public investment for future generations.

In addition, Habitat NYC understands the recommended removal of condominium development from the scope of the tax benefit, but laments the continued move away from homeownership as an important solution for New York's housing crisis. In this regard, Habitat for Humanity New York City recommends that the City consider the following policy adjustment to ensure an increased investment in affordable homeownership development as a result of these reforms.

**Utilize the proposed Mansion Tax as a dedicated revenue source for a new housing trust fund, to support the creation and preservation of permanently affordable ownership and rental housing.** The Mayor's housing plan does not invest sufficient resources to develop housing for the lowest income New Yorkers or for the development and preservation of affordable homeownership. To address this gap, the City should create a true affordable housing trust fund, supported by dedicated revenue streams like the Mansion Tax to provide flexible monies for both rental solutions for families earning below 50% AMI and homeownership solutions for families earning above 50% AMI.

Habitat for Humanity New York City knows the power and importance of affordable homeownership as we've spent the past 30-years building and rehabilitating homes with more than 380 low-income families in all five boroughs. Habitat homeowners build side-by-side with volunteers to complete their home and the homes of their neighbors, concluding the process with a 30-year, 2% fixed-interest mortgage with only 1% down plus 250 hours of sweat equity per household adult. With proper support, Habitat NYC is able to serve families earning 50-80% AMI, allowing us to sell a family with 2 children earning \$45,000 a year their first home for \$140,000.

Affordable homeownership is critical to the goal of fostering diverse livable neighborhoods, pushing back against displacement due to gentrification, and building both individual and community wealth. Homeownership has not only been shown to have positive effects on family and individual health outcomes, educational performance, and community engagement, it continues to be an important key to aiding families in building wealth and establishing generational economic success. The City and State should invest new revenue in housing solutions that include homeownership and ensure that new taxes related to housing be "lockboxed" for this purpose.

Thank you for the opportunity to testify today. We look forward to continue partnering with the City in serving low-income families in need of affordable housing and implementing the Mayor's plan in a way that will truly benefit all New Yorkers.



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**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON  
HOUSING AND BUILDING – THE MAYOR’S PROPOSED AMENDMENTS TO THE  
421-A TAX BENEFIT PROGRAM: CITY-WIDE AFFORDABLE HOUSING, DEEPER  
AFFORDABILITY, AND A MANSION TAX.**

**JUNE 1, 2015**

Thank you Chairperson Williams, and members of the Committee on Housing and Buildings, for the opportunity to provide testimony today.

This testimony is submitted on behalf of The Legal Aid Society. The Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society’s Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society’s legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits,

foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law.

### **Introduction**

421-a is a failed tax benefit program; one that costs New York City over a billion a year in tax payer dollars. In exchange for the billions of dollars of subsidies paid out to developers, New York City has received very little affordable housing for its citizens. Indeed the vast majority of the units built under this program are completely unaffordable to the New Yorkers living in the neighborhoods where the apartments are built. The best example of the failures of the program is the 100 million dollar condominium at One57. Ordinarily property taxes on an apartment which sold for 100 million dollars would cost the owner \$28,000 a month. Instead, thanks to the 421-a tax benefit program, this billionaire's property tax bill will be discounted 90 percent to \$1,700 a month.<sup>1</sup> There may have been a time in New York City's past where this program made sense. However, this is not that time. The New York City Council should use all legal means within their power to end this program.

### **421-a Tax Benefit Program**

During the 1970's when the 421-a Tax Benefit Program was created, New York City was viewed as a risky investment. There was wholesale disinvestment from the city and a tax abatement was necessary to encourage residential construction. However, in the year 2015, the city looks very different and an as of right program which provides developers with much and asks very little of them is no longer needed.

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<sup>1</sup> The Daily Beast, January 20, 2015, "Want to See the State of the Union? Gaze Up at the Tower Where Billionaires Get Tax Abatements", Michael Daly, <http://www.thedailybeast.com/articles/2015/01/20/want-to-see-the-state-of-the-union-gaze-up-at-the-aborrent-billionaire-s-tower.html> (last accessed January 26, 2015)

Currently, 421-a costs the city 1.1 billion a year, and the cost has more than quadrupled in the last ten years. In exchange for this massive tax giveaway, the program has produced very little affordable housing. In 2003, a report by the Independent Budget Office found that less than 10 percent of units receiving 421-a benefits were affordable. A recent study of 421-a in downtown Brooklyn by the Real Affordability for All campaign suggests that changes made to the program in 2006 and 2008 have not resulted in much affordable housing being build there. Another report written by the Community Service Society found that the 421-a program was “unacceptably inefficient”.<sup>2</sup> Indeed, the IBO reports that there are 150,000 units receiving 421-a tax benefits and assuming that the number of affordable units has remained steady, and all recent reports suggest that it has, New York City has received less than 15,000 affordable apartments for the over a billion dollars a year in tax giveaways. Adding to the worthlessness of this program, the affordable units almost always triple dip into City resources and counts any affordable housing against multiple programs including 421-a, density bonuses from inclusionary zoning and direct subsidies from the City. Because of the triple dipping, there is no way to determine which program spurred the creation of affordable housing.

Additionally, the affordable housing which may or may not be created by the 421-a program is unaffordable to many New Yorkers. Putting aside the over 90 percent of the housing which is market rate and out of reach of ordinary New Yorkers, the housing that has been built, and, is in theory the justification for the program, is too expensive for 40 percent of New Yorkers. In other words, 40 percent of New Yorkers are too poor for the housing purchased by the 1.1 billion dollars in tax subsidies given to developers every year.

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<sup>2</sup> New York’s Unaffordable Housing Program: Time to End 421-A, Tom Waters & Victor Bach, May 2015, The Community Service Society of New York

The true beneficiaries of the program are the extremely wealthy developers who receive the benefits. Indeed, there have been attempts made to reform the law in the past, however, developers have exploited every loophole, so that the reforms have failed to result in much change. A recent report published by The Community Service Society, considered whether the 2008 reforms to the law resulted in more affordable housing being built.<sup>3</sup> The analysis showed that the reforms have had little effect on the production of affordable units.

While the current program fails entirely to provide much needed affordable housing to the low income New Yorkers who are represented by the Legal Aid Society, the proposal before this committee will provide housing affordable only to those families earning over \$100,000 a year. The federal government defines low income as income that is at 80 percent of area median income and lower. Most of our clients are extremely low income at 30 percent of area median income. The plan before this committee would provide additional affordable housing to those families at 130 percent of area median income.

Further, the Real Affordability for All campaign released a report last year which examined 421-a's effect on the development in downtown Brooklyn, zip codes 11201, 11217 and 11215.<sup>4</sup> The report found that the average price for new condos was \$777,000, requiring a household income of at least 150,000, almost double the area's median income. The average rent for the new rental units was \$2,643 which would require a household income of \$106,000, 20 percent higher than the area's median incomes. Three fourth of the buildings received a 15 year tax abatement as of right, which allowed the developer to avoid building a single unit of affordable housing. What the 421-a tax benefit program has

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<sup>3</sup> New York's Unaffordable Housing Program: Time to End 421-A, Tom Waters & Victor Bach, May 2015, The Community Service Society of New York

<sup>4</sup> Luxurious Loophole: How Developers Use Taxpayer's to Subsidize Housing for the Rich: A New Report on Downtown Brooklyn and the 421-a Program, Researched and Written by the Real Affordability for All Campaign, April 2014.

created is luxury housing which leads to increased market pressure, higher rents, and displacement in surrounding neighborhoods such as downtown Brooklyn, Western Queens, and Harlem.

Lastly, it is reprehensible that billions of dollars of tax payer money is going to wealthy developers without a requirement that those developers provide good jobs for New Yorkers. Instead, 421-a developers hire contractors who not only do not pay prevailing wage nor hire locally but steal from their employees.

If the concern is how do we ensure stability and affordability for the tenants in New York City, the answer must be close the loopholes in the rent laws. In 2015, we must end deregulation of rent-regulated apartments. In the past twenty years, we have lost hundreds of thousands of affordable regulated units through vacancy deregulation. Vacancy deregulation allows a landlord to take an apartment out of regulation, with no oversight as long as the apartment is vacant and the landlord can reasonably claim that the apartment could rent for \$2,500. This creates an incentive for landlords to harass long-term tenants out of their homes and communities. The laws that assist landlords in increasing rents to reach the \$2,500 threshold must also be addressed. We must close these loopholes by repealing the vacancy bonus and reforming the individual apartment improvement system that often does raise rents up to \$1,500 upon turnover. Furthermore, we must strengthen the rent laws by enacting legislation, which would slow the escalation of rents that are increasingly unaffordable for current tenants. This legislation includes reforming major capital improvements, preferential rents, and the rent increases for rent control tenants.

#### **Conclusion**

Thank you for the opportunity to testify before this committee on this important issue. We strongly believe that there is no justification for the continuation of this program



June 1, 2015

Page 6

which provides developers with billions of tax dollars. The City Council must do everything in its power to end this tax giveaway and to renew and strengthen the rent laws.

Respectfully submitted,

Ellen Davidson, Esq.  
The Legal Aid Society  
Civil Practice  
Law Reform Unit  
199 Water Street, 3rd Floor  
New York, NY 10038  
(212) 577-3300

**TESTIMONY OF THE QUEENS AND BRONX BUILDING ASSOCIATION ON CHANGES TO  
REAL PROPERTY TAX LAW SECTION 421-a.**

**JUNE 1, 2015**

**GOOD DAY. I AM ROBERT ALTMAN, CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION (QBBA), AND I AM TESTIFYING ON ITS BEHALF REQUESTING CHANGES TO THE PROPOSED 421-A LEGISLATIVE PROPOSAL.**

**FIRST, WE REQUEST THAT ANY NEW PROPOSAL GRANDFATHER ANY PLANS ALREADY SUBMITTED WITH THE BUILDINGS DEPARTMENT (DOB). DOB HAS HAD ITS ISSUES IN THE PAST YEAR, WITH BOTH SCANDALS AND REFORMS SLOWING PROCESSES. MOREOVER, GETTING SOME APPROVALS FROM OTHER AGENCIES REQUIRED TO BUILD HAS ALSO SLOWED MATTERS. ALL THIS HAS MADE MEETING THE JUNE 15<sup>TH</sup> DEADLINE A DIFFICULT ENDEAVOR. BUILDERS WHO PLANNED TO MEET THE DEADLINE SHOULD NOT BE PUNISHED BECAUSE OF THIS. IN FACT, THERE IS SOMETHING OF AN INCENTIVE TO DELAY APPROVALS BY THE ADMINISTRATION. THIS INCENTIVE SHOULD BE ELIMINATED.**

**SECOND, WE BELIEVE THAT DEVELOPMENTS IN MOST AREAS OF QUEENS, BROOKLYN, STATEN ISLAND AND THE BRONX SHOULD BE ALLOWED TO RECEIVE 421-a BENEFITS EVEN IF THERE IS OWNERSHIP IN CONDOMINIUM OR COOPERATIVE FORM. OUR ASSOCIATION BELIEVES THAT HOME OWNERSHIP IS A STABILIZING FORCE FOR MANY COMMUNITIES AND RATHER THAN HAVE A ONE-SIZE-FITS-ALL APPROACH, A DEEPER ANALYSIS NEEDS TO BE DONE. AND WHILE MANY PEOPLE SEEM TO THINK THAT EVERY APARTMENT RECEIVING SUCH BENEFITS IS SLATED FOR A MILLIONAIRE, OUR ANALYSIS SHOWS THIS IS NOT THE CASE. THE BENEFITS ARE JUST NOT THAT HUGE. IN FACT, AS THE ATTACHED CHARTS SHOW, MOST HOUSING UNITS RECEIVE MUCH LESS THAN THE PUNDITS AND OPPONENTS THINK. WHILE MANHATTAN UNITS DO RECEIVE SUBSTANTIAL BENEFITS, MOST OF THE BOROUGH UNITS RECEIVE SIGNIFICANTLY LESS. THE BOROUGHS ARE NOT MANHATTAN, YET FOR SOME REASON, THEY HAVE BEEN TREATED LIKE THEY ARE.**

**THIRD, PREVAILING WAGE IS A DANGEROUS ELEMENT. AS YOU CAN SEE FROM THE ATTACHED CHART, MOST TIMES, THE TAX BREAK IS AROUND \$6,000 TO \$7,000. BUT IN DISCUSSING THE IMPACT OF PREVAILING WAGE ON COST PROJECTIONS, OUR BUILDERS FIND THAT IT LESSENS THE ECONOMIC FEASIBILITY OF A PROJECT. PREVAILING WAGE FOR MAINTENANCE WORKERS IS COSTING VARIOUS PROJECTS \$250 PER APARTMENT PER MONTH MORE IN COSTS (\$3,000 PER YEAR). PREVAILING WAGE FOR CONSTRUCTION WORK IS ESTIMATED TO COST APPROXIMATELY \$6,500 PER YEAR. THUS, PREVAILING WAGES COST APPROXIMATELY \$9,500 MORE PER UNIT PER YEAR, MORE THAN WIPING OUT THE AVERAGE TAX BREAK OUTSIDE OF MANHATTAN. ADDITIONALLY, THESE COSTS ARE PERMANENT WHILE THE TAX BREAK IS FINITE.**

**TESTIMONY OF THE QUEENS AND BRONX BUILDING ASSOCIATION ON CHANGES TO  
REAL PROPERTY TAX LAW SECTION 421-a.**

**JUNE 1, 2015**

**FOR THE REASONS OUTLINED, WE REQUEST THAT THERE BE A GRANDFATHER ELEMENT TO THE NEW  
421-A, THAT CONDO AND COOP OWNERSHIP BE ALLOWED, AND THAT PREVAILING WAGES NOT BE  
REQUIRED.**

**TESTIMONY OF THE QUEENS AND BRONX BUILDING ASSOCIATION ON CHANGES TO  
REAL PROPERTY TAX LAW SECTION 421-a.  
JUNE 1, 2015**

**NOTES FOR THE ATTACHED CHART**

1. How were units chosen? We attempted to pick projects over 50 units, something that was easy with all the boroughs except Staten Island which has very low density that does not allow for projects of this size. Buildings should have had benefits start after 2006 (but these buildings could still have been grandfathered under previous iterations of 421-a). We tried to pick neighborhoods with some geographic diversity, but within a given neighborhood, buildings were randomly chosen. Moreover, buildings were limited to three regulated buildings and three unregulated buildings in accordance with the City's terminology.
2. What is the top chart? Under the 421-a program that was started in 2008, the tax break per unit was capped at \$65,000 of assessed value with 3% increases per year. The chart examines the increase in the assessment cap and the tax associated with it.
3. Does the chart always compare apples to apples? No. Manhattan developments have different benefit schedules from borough areas and some have already begun to phase out. There needs to be an adjustment to see the full benefit from a few years back. The chart does not make that adjustment. It does note the current percentage of the full benefit.
4. What is the difference between regulated and unregulated buildings? We actually don't know. That is how they are classified by HPD and the Department of Finance. The classification is noted here because the agencies note it. In order to be complete, we took three of each within each borough except Staten Island, which again has a much more limited use of 421-a.
5. Are commercial units included in the unit count? Yes. Commercial space and other floor area can get a tax break under 421-a for up to 12% of the aggregate floor area. Thus, they should be part of the divisor on the tax break per unit calculation.
6. Why break out condo units? The sites used are rental buildings. Condos receive an individual tax break and must be separately noted.
7. Can I run my own calculations on different sites? Sure. All data is readily available on-line.

Housing Data for 421-a verifiable here:

<http://www1.nyc.gov/site/finance/benefits/benefits-421a.page>

Assessment Data verifiable here:

<http://nycprop.nyc.gov/nycproperty/nynav/jsp/selectbbl.jsp>

8. Can I get your data in EXCEL Format? Yes. Email [rsalaw@nyctaxbreak.com](mailto:rsalaw@nyctaxbreak.com) and you can receive the chart in EXCEL Format.

## QUEENS 421-a EXAMPLES

Tax Year	421-a Cap	Tax Rate	Tax Break Limit/Unit
2009-10	\$ 66,950.00	13.241%	\$ 8,864.85
2010-11	\$ 68,958.50	13.353%	\$ 9,208.03
2011-12	\$ 71,027.26	13.433%	\$ 9,541.09
2012-13	\$ 73,158.07	13.181%	\$ 9,642.97
2013-14	\$ 75,352.81	13.145%	\$ 9,905.13
2014-15	\$ 77,613.40	12.855%	\$ 9,977.20
2015-16 **	\$ 79,941.80	12.855%	\$ 10,276.52

\*\* - tax rate assumed and based on 2014-15

### Three Regulated Examples for 2015-16

	Number of Units	Transitional AV 421-a tax break (entire building)		Actual AV 421-a tax break (entire building)		Tax Break Limit		Tax Break		Using	Using Actual	Years of benefit	Neighborhood	Year Built
		a tax break	break	Transitional AV	Actual AV	Transition AV per unit	Actual AV Per Unit	Transitional AV Under	AV under Limit					
Q, Block 15815, Lot 71	122	\$ 1,974,800.00	\$ 1,855,190.00	\$ 253,860.54	\$ 238,484.67	\$ 2,080.82	\$ 1,954.79	\$ 8,195.69	\$ 8,321.73	25	Far Rockaway	2000		
Q, Block 414, Lot 41	141	\$ 7,476,063.00	\$ 8,507,733.00	\$ 961,047.90	\$ 1,093,669.08	\$ 6,815.94	\$ 7,756.52	\$ 3,460.58	\$ 2,520.00	15	Long Island City	2011		
Q, Block 6797, Lot 54*	142	\$ 6,356,174.00	\$ 7,462,842.00	\$ 817,086.17	\$ 959,348.34	\$ 5,754.13	\$ 6,755.97	\$ 4,522.39	\$ 3,520.54	25	Flushing - South	2000		

### Three Unregulated Examples for 2015-16

Q, Block 28, Lot 21	188	\$ 11,681,952.00	\$ 12,561,112.00	\$ 1,501,714.93	\$ 1,614,730.95	\$ 7,987.85	\$ 8,588.99	\$ 2,288.67	\$ 1,687.53	15	Long Island City	2012
Q, Block 9764, Lot 77*	81	\$ 3,396,330.00	\$ 3,813,300.00	\$ 436,598.22	\$ 490,199.72	\$ 5,390.10	\$ 6,051.85	\$ 4,886.42	\$ 4,224.67	15	Jamaica	2006
Q, Block 1321, Lot 1*	70	\$ 3,399,207.00	\$ 2,369,115.00	\$ 436,968.06	\$ 304,549.73	\$ 6,242.40	\$ 4,350.71	\$ 4,034.12	\$ 5,925.81	15	Woodside	2008

### Three Condomium Units

Q, Block 1183, Lot 1014	1	\$ -	\$ 24,902.00	\$ -	\$ 3,201.15	\$ -	\$ 3,201.15	\$ 10,276.52	\$ 7,075.37	15	Woodside	2008
Q, Block 16, Lot 1250	1	\$ 33,336.00	\$ 30,270.00	\$ 4,285.34	\$ 3,891.21	\$ 4,285.34	\$ 3,891.21	\$ 5,991.18	\$ 6,385.31	15	Long Island City	2010
Q, Block 5039, Lot 2118	1	\$ 72,044.00	\$ 59,383.00	\$ 9,261.26	\$ 7,633.68	\$ 9,261.26	\$ 7,633.68	\$ 1,015.26	\$ 2,642.84	15	Flushing - North	2010

Italicized means subject to prevailing wage maintenance requirement, which means an additional \$3,000 per unit of maintenance costs.

\* - INCLUDES COMMERCIAL UNITS

## BRONX 421-a EXAMPLES

Tax Year	421-a Cap	Tax Rate	Tax Break Limit/Unit
2009-10	\$ 66,950.00	13.241%	\$ 8,864.85
2010-11	\$ 68,958.50	13.353%	\$ 9,208.03
2011-12	\$ 71,027.26	13.433%	\$ 9,541.09
2012-13	\$ 73,158.07	13.181%	\$ 9,642.97
2013-14	\$ 75,352.81	13.145%	\$ 9,905.13
2014-15	\$ 77,613.40	12.855%	\$ 9,977.20
2015-16 **	\$ 79,941.80	12.855%	\$ 10,276.52

\*\* - tax rate assumed and based on 2014-15

### Three Regulated Examples for 2015-16

	Number of Units	Transitional AV 421-a	Actual AV 421-a tax	Tax Break Limit	Tax Break Limit	Tax Break	Tax Break	Using	Using Actual	Years of	Neighborho	Year
		tax break (entire building)	break (entire building)	Transitional AV	Actual AV	per unit	Actual AV Per Unit	Transitional AV Under	AV under Limit	benefit	od	Built
Bx, Block 2418, Lot 33	167	\$ 2,196,625.00	\$ 2,805,925.00	\$ 282,376.14	\$ 360,701.66	<u>\$ 1,690.88</u>	<u>\$ 2,159.89</u>	\$ 8,585.64	\$ 8,116.63	25	Melrose	2005
Bx, Block 2379, Lot 7*	171	\$ 1,971,615.00	\$ 2,334,855.00	\$ 253,451.11	\$ 300,145.61	<u>\$ 1,482.17</u>	<u>\$ 1,755.24</u>	\$ 8,794.35	\$ 8,521.28	25	Morrisiana	2004
Bx, Block 2850, Lot 23	99	\$ 2,053,327.00	\$ 2,772,664.00	\$ 263,955.19	\$ 356,425.96	<u>\$ 2,666.21</u>	<u>\$ 3,600.26</u>	\$ 7,610.30	\$ 6,676.26	25	Mount Hope	2007

### Three Unregulated Examples for 2015-16

Bx, Block 2367, Lot 1	136	\$ 4,157,420.00	\$ 3,744,950.00	\$ 534,436.34	\$ 481,413.32	<u>\$ 3,929.68</u>	<u>\$ 3,539.80</u>	\$ 6,346.84	\$ 6,736.72	25	Morrisiana	2008
<i>Bx, Block 2872, Lot 7</i>	<i>127</i>	<i>\$ 3,588,965.00</i>	<i>\$ 3,493,745.00</i>	<i>\$ 461,361.45</i>	<i>\$ 449,120.92</i>	<i>\$ 3,632.77</i>	<u><i>\$ 3,536.39</i></u>	<i>\$ 6,643.75</i>	<i>\$ 6,740.13</i>	<i>25</i>	<i>Highbridge</i>	<i>2009</i>
<i>Bx, Block 4596, Lot 22*</i>	<i>127</i>	<i>\$ 3,688,791.00</i>	<i>\$ 3,380,721.00</i>	<i>\$ 474,194.08</i>	<i>\$ 434,591.68</i>	<u><i>\$ 3,733.81</i></u>	<u><i>\$ 3,421.98</i></u>	<i>\$ 6,542.71</i>	<i>\$ 6,854.54</i>	<i>25</i>	<i>Bronxdale</i>	<i>2010</i>

### Three Condominium Units

Bx, Block 4664, Lot 1005	1	\$ 16,226.00	\$ 18,163.00	\$ 2,085.85	\$ 2,334.85	<u>\$ 2,085.85</u>	<u>\$ 2,334.85</u>	\$ 8,190.67	\$ 7,941.67	15	Williamsbrid ge	2006
Bx, Block 5903, Lot 1063	1	\$ 85,474.00	\$ 95,113.00	\$ 10,987.68	\$ 12,226.78	<u>\$ 10,987.68</u>	<u>\$ 12,226.78</u>	\$ (711.16)	\$ (1,950.26)	15	Riverdale	2006
Bx, Block 2693, Lot 1016	1	\$ -	\$ 8,135.00	\$ -	\$ 1,045.75	\$ -	<u>\$ 1,045.75</u>	\$ 10,276.52	\$ 9,230.77	25	Morrisiana/L ongwood	2007

Italicized means subject to prevailing wage maintenance requirement, which means an additional \$3,000 per unit of maintenance costs. Condos not checked for this status.

\* - HAS COMMERCIAL UNITS INCLUDED

## MANHATTAN 421-a EXAMPLES

Tax Year	421-a Cap	Tax Rate	Tax Break Limit/Unit
2009-10	\$ 66,950.00	13.241%	\$ 8,864.85
2010-11	\$ 68,958.50	13.353%	\$ 9,208.03
2011-12	\$ 71,027.26	13.433%	\$ 9,541.09
2012-13	\$ 73,158.07	13.181%	\$ 9,642.97
2013-14	\$ 75,352.81	13.145%	\$ 9,905.13
2014-15	\$ 77,613.40	12.855%	\$ 9,977.20
2015-16 **	\$ 79,941.80	12.855%	\$ 10,276.52

\*\* - tax rate assumed and based on 2014-15

### Three Regulated Examples for 2015-16\*

	Number of Units	Transitional AV 421-a tax break (entire building)	Actual AV 421-a tax break (entire building)	Tax Break Limit Transitional AV	Tax Break Limit Actual AV	Tax Break Transition AV per unit	Tax Break Actual AV Per Unit	Using Transitional AV Under Limit	Using Actual AV under Limit	Years of benefit	Neighborhood	Year Built	Year of Benefit	Percent of Benefit
M, Block 761, Lot 43	570	\$ 79,840,810.00	\$ 89,559,450.00	\$ 10,263,536.13	\$ 11,512,867.30	<u>\$ 18,006.20</u>	\$ 20,198.01	\$ (7,729.69)	\$ (9,921.49)	20	Fashion	2005	Year 5	100%
M, Block 88, Lot 14	402	\$ 55,713,740.00	\$ 64,121,850.00	\$ 7,162,001.28	\$ 8,242,863.82	<u>\$ 17,815.92</u>	\$ 20,504.64	\$ (7,539.41)	\$ (10,228.12)	20	Civic Center	2004	Year 7	100%
M, Block 1152, Lot 13	302	\$ 20,150,823.00	\$ 23,432,889.00	\$ 2,590,388.30	\$ 3,012,297.88	<u>\$ 8,577.44</u>	\$ 9,974.50	\$ 1,699.07	\$ 302.02	10	UWS	2007	Year 5	60%

### Three Unregulated Examples for 2015-16\*

M, Block 1625, Lot 16	301	\$ 23,332,880.00	\$ 26,756,064.00	\$ 2,999,441.72	\$ 3,439,492.03	<u>\$ 9,964.92</u>	\$ 11,426.88	\$ 311.60	\$ (1,150.36)	10	Harlem East	2008	Year 4	80%
M, Block 1033, Lot 9	272	\$ 25,327,654.00	\$ 27,570,274.00	\$ 3,255,869.92	\$ 3,544,158.72	<u>\$ 11,970.11</u>	\$ 13,030.00	\$ (1,693.59)	\$ (2,753.48)	20	Midtown West	2003	Year 12	100%
M, Block 1455, Lot 21	212	\$ -	\$ 22,584,992.00	\$ -	\$ 2,903,300.72	\$ -	<u>\$ 13,694.81</u>	NA	\$ (3,418.29)	10	UES	2009	Year 3	80%

### Three Condominium Unitss

M, Block 1272, Lot 1008	1	\$ 48,957.00	\$ 48,921.00	\$ 6,293.42	\$ 6,288.79	<u>\$ 6,293.42</u>	\$ 6,288.79	\$ 3,983.10	\$ 3,987.73	10	Midtown West	2007	Year 5	60%
M, Block 859, Lot 1249	1	\$ 35,498.00	\$ 39,019.00	\$ 4,563.27	\$ 5,015.89	<u>\$ 4,563.27</u>	\$ 5,015.89	\$ 5,713.25	\$ 5,260.63	10	Murray Hill	2008	Year 6	60%
M, Block 149, Lot 1135	1	\$ 161,652.00	\$ 166,249.00	\$ 20,780.36	\$ 21,371.31	<u>\$ 20,780.36</u>	\$ 21,371.31	NA	\$ (11,094.79)	10	Civic Center	2010	Year 3	80%

Italicized means subject to prevailing wage maintenance requirement, which means an additional \$3,000 per unit of maintenance costs.

\* - ALL HAVE COMMERCIAL UNITS INCLUDED

## BROOKLYN 421-a EXAMPLES

Tax Year	421-a Cap	Tax Rate	Tax Break Limit/Unit
2009-10	\$ 66,950.00	13.241%	\$ 8,864.85
2010-11	\$ 68,958.50	13.353%	\$ 9,208.03
2011-12	\$ 71,027.26	13.433%	\$ 9,541.09
2012-13	\$ 73,158.07	13.181%	\$ 9,642.97
2013-14	\$ 75,352.81	13.145%	\$ 9,905.13
2014-15	\$ 77,613.40	12.855%	\$ 9,977.20
2015-16 **	\$ 79,941.80	12.855%	\$ 10,276.52

\*\* - tax rate assumed and based on 2014-15

### Three Regulated Examples for 2015-16\*

	Number of Units	Transitional AV 421-a		Tax Break Limit Transitional AV	Tax Break Limit Actual AV	Tax Break		Using		Years of benefit	Neighborhood	Year Built
		tax break (entire building)	Actual AV 421-a tax break (entire building)			Transition AV per unit	Actual AV Per Unit	Transitional AV Under Limit	Using Actual AV under Limit			
<i>B, Block 122, Lot 13*</i>	378	\$ 22,647,950.00	\$ 28,550,250.00	\$ 2,911,393.97	\$ 3,670,134.64	<u>\$ 7,702.10</u>	\$ 9,709.35	\$ 2,574.42	\$ 567.17	15	<i>Metrotech</i>	<i>2009</i>
B, Block 3184, Lot 19	144	\$ 2,081,628.00	\$ 2,935,008.00	\$ 267,593.28	\$ 377,295.28	<u>\$ 1,858.29</u>	\$ 2,620.11	\$ 8,418.23	\$ 7,656.41	25	Bushwick	2006
B, Block 1149, Lot 18*	123	\$ 5,719,190.00	\$ 6,653,908.00	\$ 735,201.87	\$ 855,359.87	<u>\$ 5,977.25</u>	\$ 6,954.15	\$ 4,299.27	\$ 3,322.37	25	Crown Heights	2006

### Three Unregulated Examples for 2015-16\*

<i>B, Block 2289, Lot 14</i>	142	\$ 5,991,760.00	\$ 11,076,730.00	\$ 770,240.75	\$ 1,423,913.64	<u>\$ 5,424.23</u>	\$ 10,027.56	\$ 4,852.29	\$ 248.96	15	<i>Williamsburgh -</i>	<i>2009</i>
B, Block 5320, Lot 24	107	\$ 4,103,665.00	\$ 4,104,835.00	\$ 527,526.14	\$ 527,676.54	<u>\$ 4,930.15</u>	\$ 4,931.56	\$ 5,346.37	\$ 5,344.96	15	Kensington	2005
<i>B, Block 1051, Lot 33</i>	81	\$ 3,760,879.00	\$ 5,028,809.00	\$ 483,461.00	\$ 646,453.40	<u>\$ 5,968.65</u>	\$ 7,980.91	\$ 4,307.87	\$ 2,295.61	25	<i>Gowanus</i>	<i>2009</i>

### Three Condominium Units

B, Block 1132, Lot 1218	1	\$ -	\$ 49,841.00	\$ -	\$ 6,407.06	\$ -	<u>\$ 6,407.06</u>	\$ 10,276.52	\$ 3,869.46	25	Crown Heights	2006
B, Block 2559, Lot 1101	1	\$ -	\$ 42,071.00	\$ -	\$ 5,408.23	\$ -	<u>\$ 5,408.23</u>	\$ 10,276.52	\$ 4,868.29	15	Greenpoint	2008
B, Block 724, Lot 1019	1	\$ 28,731.00	\$ 31,750.00	\$ 3,693.37	\$ 4,081.46	<u>\$ 3,693.37</u>	\$ 4,081.46	\$ 6,583.15	\$ 6,195.06	25	Sunset Park	2007

Italicized means subject to prevailing wage maintenance requirement, which means an additional \$3,000 per unit of maintenance costs.

\* - THESE HAVE COMMERCIAL UNITS INCLUDED



## STATEN ISLAND 421-a EXAMPLES

Tax Year	421-a Cap	Tax Rate	Tax Break Limit/Unit
2009-10	\$ 66,950.00	13.241%	\$ 8,864.85
2010-11	\$ 68,958.50	13.353%	\$ 9,208.03
2011-12	\$ 71,027.26	13.433%	\$ 9,541.09
2012-13	\$ 73,158.07	13.181%	\$ 9,642.97
2013-14	\$ 75,352.81	13.145%	\$ 9,905.13
2014-15	\$ 77,613.40	12.855%	\$ 9,977.20
2015-16 **	\$ 79,941.80	12.855%	\$ 10,276.52

\*\* - tax rate assumed and based on 2014-15

### Four Unregulated Examples for 2015-16

	No. of Units	Transitional AV 421-a tax break (entire building)	Actual AV 421-a tax break (entire building)	Tax Break Limit Transitional AV	Tax Break Limit Actual AV	Tax Break Transition AV per unit	Tax Break Actual AV Per Unit	Using Transitional AV Under Limit	Using Actual AV under Limit	Years of benefit	Neighborhood	Year Built
<i>Si, Block 491, Lot 11*</i>	93	\$ 3,386,150.00	\$ 3,008,340.00	\$ 435,289.58	\$ 386,722.11	\$ 4,680.53	\$ <u>4,158.30</u>	\$ 5,595.99	\$ 6,118.22	25	Stapleton	2011
<i>Si, Block 13, Lot 60*</i>	41	\$ 4,129,176.00	\$ 3,560,378.00	\$ 530,805.57	\$ 457,686.59	\$ 12,946.48	\$ <u>11,163.09</u>	\$ (2,669.96)	\$ (886.57)	15	New Brighton/SG	2012
Si, Block 17, Lot 74	11	\$ 640,376.00	\$ 446,876.00	\$ 82,320.33	\$ 57,445.91	\$ 7,483.67	\$ <u>5,222.36</u>	\$ 2,792.85	\$ 5,054.16	25	New Brighton	2006
Si, Block 8047, Lot 43*	12	\$ 401,205.00	\$ 390,691.00	\$ 51,574.90	\$ 50,223.33	\$ 4,297.91	\$ <u>4,185.28</u>	\$ 5,978.61	\$ 6,091.24	15	Tottenville	2006

### Three Condominium Units

Si, Block 1073, Lot 1002	1	\$ -	\$ 28,746.00	\$ -	\$ 3,695.30	\$ -	\$ <u>3,695.30</u>	\$ 10,276.52	\$ 6,581.22	25	Port Richmond	2007
Si, Block 4229, Lot 1112	1	\$ -	\$ 17,503.00	\$ -	\$ 2,250.01	\$ -	\$ <u>2,250.01</u>	\$ 10,276.52	\$ 8,026.51	15	New Dorp	2008
Si, Block 2998, Lot 1004	1	\$ -	\$ 5,874.00	\$ -	\$ 755.10	\$ -	\$ <u>755.10</u>	\$ 10,276.52	\$ 9,521.42	15	Concord	2010

Italicized means subject to prevailing wage maintenance requirement, which means an additional \$3,000 per unit of maintenance costs.

\* - HAS COMMERCIAL UNITS INCLUDED



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## FOR THE RECORD

### MEMORANDUM IN OPPOSITION

#### Proposal to increase the so-called “Mansion Tax” in NYC

Date: June 2015  
Contact: Michael Kelly

The New York State Association of REALTORS®, a not-for-profit trade organization representing over 50,000 of New York state’s real estate professionals, **strongly opposes** New York City Mayor de Blasio’s proposal to impose a “City” real estate transfer tax of an additional 1 percent on the sale of properties valued at more than \$1.75 million and additional 1.5 percent on properties valued at more than \$5 million.

While we applaud the goal of increasing the availability of affordable housing, levying additional taxes on real estate will hurt families, curb real estate transfers, reduce tax revenues and negatively impact our economy. The creation of a higher estate transfer tax places the burden solely on the buyer at a time when we should be incentivizing homeownership, not making it more difficult and less affordable.

The current “mansion tax” already imposes an additional 1 percent tax on buyers who purchase a home that sells for \$1 million or more. In 1989, when this additional tax was enacted, the nickname “mansion tax” was more applicable because a million-dollar property was far above the average sales price in New York State.

However, in today’s real estate market, the number of homes and condominiums valued at \$1 million or more is significantly greater, particularly in New York City where the average sale price of cooperatives and condominiums in Manhattan topped \$1.68 million in 2014 for the first time, an increase of more than 16% from 2013, and 10% above peak prices in 2008 during the last real-estate boom, an analysis by The Wall Street Journal found<sup>1</sup>. Even more, a significant disparity can be measured by looking at the drastic increase in the cost of housing in Manhattan over the past 24 years when the “Mansion Tax” was first enacted. The median sales price of an apartment during for 2014 was \$911,000 reflecting a near 280% increase over the median sales price of \$240,000 back in 1989.<sup>2</sup>

Based on these staggering numbers, it is more than apparent that the “Mansion Tax” no longer applies to only New York’s most wealthy. This additional tax burden is now being applied to many middle income New York City homebuyers.

<sup>1</sup> “Manhattan Apartment Prices Soar to Record Levels in 2014 - Average Price of Manhattan Co-op or Condo Tops \$1.68 Million” by Josh Barbanel published December 26, 2014. <http://www.wsj.com/articles/manhattan-apartment-prices-soar-to-record-levels-in-2014-1419617159>

<sup>2</sup> Id.



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New York consistently ranks at or near the top of the list of states with the highest real estate closing costs in the nation. In fact, New York had the dubious dishonor of having the 3<sup>rd</sup> highest closing costs in the country in 2014.<sup>3</sup> Further increases to the tax burden imposed on real estate transactions will prevent prospective purchasers from being able to achieve the American dream of homeownership.

On behalf of the New York State Association of REALTORS®, we thank you for your continued efforts to expand affordable housing in all five boroughs, however we oppose raising taxes on other forms of housing in order to accomplish that goal.

For the above stated reasons, the New York State Association of REALTORS® strongly opposes any proposal to increase real estate taxes in New York City and urges the Mayor to withdraw his tax proposal.

*The New York State Association of REALTORS® is a not-for-profit trade organization representing more than 50,000 of New York State's real estate professionals. The term REALTOR® is a registered trademark, which identifies real estate professionals who subscribe to a strict code of ethics as members of the National Association of REALTORS®. These REALTORS® are also members of the New York State Association of REALTORS® as well as their local board or association of REALTORS®.*

<sup>3</sup> Bankrate.com, August 4, 2014, "Closing costs by state" by Bankrate.com

JP Endres Fein

Michael S. Smith

Linda Bonarelli-Lugo

Duncan R. MacKenzie



**Testimony before the New York City Council Committee on Housing and Buildings**  
*Dave Powell, Fifth Avenue Committee/Neighbors Helping Neighbors*  
*June 1, 2015*

Thank you Council Member Williams and thank you to all the members of this committee for the opportunity to speak on the issue of the 421a program. My name is Dave Powell and I am the Director of Organizing and Advocacy at the Fifth Avenue Committee (FAC) and also at Neighbors Helping Neighbors (NHN), an organizational affiliate of the Fifth Avenue Committee. These two organizations assist approximately 400 tenants with housing problems annually, in the neighborhoods of Gowanus, Park Slope, Boerum Hill, downtown Brooklyn, Sunset Park, Bay Ridge and beyond. Fifth Avenue Committee has built or renovated over 600 units of affordable housing for low- and moderate-income residents since 1978 and we currently have nearly 400 units in development. Like many of the community-based organizations represented here today, the issue of 421a is one we know well.

The 421a program has been, and continues to be, a billion-dollar giveaway to developers, that has resulted in little affordable housing; what it has produced under the banner of “affordable housing” for the most part has been unaffordable for the majority of renters in our communities. A few weeks ago, the Mayor came out with a 421a renewal proposal, which unfortunately did not address the flaws to this program that housing and tenant advocates have articulated for years. These include the need for housing at lower AMI levels and the implementation of permanent affordability.

I will leave our colleagues at ANHD to present a more technical analysis of the flaws of the Mayor’s proposal. According to that analysis, the proposal stands to inject more market rate housing with a smaller subset of so-called “affordable housing” targeted to households at 130% of AMI, in the communities where FAC and NHN are most active. That affordable housing will not reach the average household in our communities, which are already experiencing a glut of market rate development. It is our belief that both that the current program and the Mayor’s proposal will increase gentrification and displacement pressures in our neighborhoods, particularly in Sunset Park.

Our recommendation to the state legislature and to Governor is thus that they end this developer subsidy program and instead focus on the issue most critical to our communities: strengthening the rent stabilization laws.

Rent Regulation is the biggest source of affordable housing New York City. Closing loopholes like vacancy deregulation, Individual Apartment Increases (IAI or “1/40<sup>th</sup> Increases”), Major Capital Improvements increases (MCIs) and statutory vacancy bonuses, are critical in stemming the loss of affordable housing and curbing the pattern of displacement we’ve seen in our communities. In our eviction prevention work we see



**Fifth Avenue Committee**  
Our Community. Our Future.

clearly how these loopholes in the rent laws are destroying our neighborhoods, household by household. These loopholes literally create the incentive for speculators, private equity firms and aggressive landlords to evict our neighbors. Albany must recognize, as the 2.3 million residents of rent stabilized apartments know all too well, as those no longer living in New York City know all too well, as those sleeping in NYC homeless shelters know all too well, that addressing the displacement crisis through stronger tenant protections, is a significantly deeper priority than making adjustments to this developer subsidy program.

Thank you.

###

In de Blasio's New York, where are the construction jobs going under his affordable housing plan?

**Kirsten John Foy** | 4/23/2015

## **New York Amsterdam News**

Many were optimistic when Mayor Bill de Blasio promised to lead a new affordable housing construction surge that would deliver 200,000 new and renovated units of housing to New York City over a decade.

“All told, our plan will create hundreds of thousands of construction jobs—and over 20,000 permanent jobs,” de Blasio boasted in his State of the City speech.

Under the watch of this progressive mayor, we finally had reason to hope that those jobs might go to individuals and families who live in and look like the city. However, the early indicators are not promising.

New York City has approximately 178,000 construction-industry jobs. De Blasio's plan will bring that number close to 200,000, and add another 100,000 new construction-related jobs. Few of those are likely to bring down Black unemployment, which, by best estimates, is two times the citywide average, or Latino unemployment, which is 1.5 times the citywide average. If you dig deeper into neighborhoods and communities, you find Black male unemployment can reach as high as three or four times that of whites.

New York City has a robust sector of construction unions. They have sustained thousands of good jobs. They have increased access to the middle class for tens of thousands more. Unfortunately, too few of those jobs have gone to people of color. According to the Building Congress, only 13 percent of the industry is Black, and that includes all construction-related jobs. Moreover, a full 91 percent of the construction industry is male.

The administration has made diversity part of its strategic plan for New York City's growth. De Blasio has made a point of creating an administration that looks more like the city and of working to diversify the NYPD. The city's small business commissioner touts the fact that the city has significantly increased the number of contracts awarded to minority- and women-owned businesses.

De Blasio has even initiated a push to study the diversity—or lack thereof—on the boards of directors of the city's major cultural institutions. The push should be just as aggressive on construction sites as it is in nonprofit boardrooms. These are among the jobs that Black men, who disproportionately lack college degrees, crave. There are seven concrete measures that the administration can undertake to begin the process of diversification:

- 1.) Create a pipeline from social programs, that service Blacks and Latinos, such as public housing, prison re-entry programs, job readiness and training programs, on one end and connect with placement specialists and construction industry employers. The Office of Workforce Development should re-tool into a clearinghouse for available jobs and available labor.
- 2.) Create a workforce mandate for projects receiving public subsidies and abatements. This mandate would mean hiring and retaining capable individuals receiving some form of public benefit.
- 3.) Increase incentivizes for workforce candidate hiring and employee retention through expanded tax credits for hiring and a subsidized pay schedule to catalyze the transition from job to career.

- 4.) Invest in existing training programs that service Blacks and Latinos and have job placement capacity.
- 5.) Expand training capacity by working with industry leaders, construction unions and education professionals to create specialized training courses that lead to certifications in skilled vocations, such as plumbing, iron, steel, concrete work and crane operation.
- 6.) Team with skilled construction unions to expand apprenticeship programs and make local hiring a staple of Project Labor Agreements.
- 7.) Put CTE schools (career and technical training) into the workforce pipeline by placing career guidance professionals in the schools and create a joint venue for students and employers to engage early in the educational process. Achieving diversity in the construction industry will take concessions from the unions, require reform within the development and construction industry and a commitment from the administration to industry diversification and allocating the resources necessary to develop a dynamic and diverse workforce.

As difficult as diversification is, it is a must if we are going to tackle the lack of economic mobility for people of color. This discussion is decades overdue, but it is ripe. The mayor's numbers are too big for people who look like the city not to benefit in equal measure.

Kirsten John Foy is a civil rights activist and president of Brooklyn National Action Network.

<http://amsterdamnews.com/news/2015/apr/23/de-blasios-new-york-where-are-construction-jobs-go/>



# NEW YORK CITY CENTRAL LABOR COUNCIL AFL-CIO

President  
VINCENT ALVAREZ

Secretary-Treasurer  
JANELLA T. HINDS



## Testimony on 421-A Tax Abatement Program

June 1, 2015

## FOR THE RECORD

Good morning, my name is Anthony Thomas, and I am the Political Director of the New York City Central Labor Council, AFL-CIO. Representing 1.3 million workers across 300 affiliated unions, the Central Labor Council supports prevailing wage protections for all jobs, including the construction industry. 421-A reaps large benefits for developers, and should be used as one of many tools to lift the floor on wages, and reduce the staggering wealth inequality across New York City. The Central Labor Council's assertions are backed by statistical research and analysis, which finds little significant cost difference between PLA projects and non-PLA projects of comparable scale and density.

New York State and City have the opportunity to steer massive sums of 421-A tax benefits not only towards economic expansion, but also workforce development and poverty elimination. Last year, over \$1 billion in forgone tax revenue were lost to 421-A to benefit the creation of 150,000 units of housing<sup>1</sup>. In return for the \$1 billion, we should have apprenticeships, career pathways, and wage standards for the workers impacted by lost public revenue.

Programs like the Edward J Malloy Initiative for Construction Skills Pre-Apprenticeship are creating local jobs with career pathways and truly livable wages. A report by Columbia University found 90% of Construction Skills graduates are Black, Latino, or Asian, and the average salary in the industry is \$67,110 a year<sup>2</sup>. Programs like Construction Skills represent all five boroughs, with 33% of participants from Brooklyn, 28% from the Bronx, 23% from Queens, 10% from Manhattan, and 6% from Staten Island<sup>3</sup>. This program reaches across all neighborhoods, and creates positive externalities for businesses and families.

Scientific research and methodology also challenge the claim projects with labor standards bear highly inflated costs compared to non-union counterparts. Research from the University of Utah used three methods to calculate a difference in cost, and found no statistical difference: (1) a cost comparison per square foot and per unit costs; (2) visual expansion of cost by project size and housing unit size; and (3) through 'nearest neighbor' data, comparing similar buildings and populations around the project<sup>4</sup>. The report goes on to assert, "The PLA vs. non-PLA projects...bear little-to-no cost difference in similar places, at a similar time, of comparable scale and targeted populations<sup>5</sup>." Labor standards ensure the quality of construction will remain long after the job is complete, and follows in cost to comparable work.

<sup>1</sup> Ryan Hutchins, *Capital*, "De Blasio's 421-a dilemma", March 2, 2015: <http://www.capitalnewyork.com/article/city-hall/2015/03/8563004/de-blasios-421-dilemma>

<sup>2</sup> Ester Fuchs, Dorian Warren Kimberly Bayer, *Columbia SIPA*, "Expanding Opportunity For Middle Class Jobs in New York City", March 2014: [https://sipa.columbia.edu/system/files/Columbia%20SIPA%20Construction%20Skills%20Report%20Final%20-%20March%202014\\_0.pdf](https://sipa.columbia.edu/system/files/Columbia%20SIPA%20Construction%20Skills%20Report%20Final%20-%20March%202014_0.pdf)

<sup>3</sup> See above source

<sup>4</sup> Peter Philips, Scott Littlehale, *University of Utah*, "Did PLAs on LA Affordable Housing Projects Raise Construction Costs?" December 15, 2014. Working Paper.

<sup>5</sup> See above source (Page 12).





# NEW YORK CITY CENTRAL LABOR COUNCIL AFL-CIO

President  
VINCENT ALVAREZ

Secretary-Treasurer  
JANELLA T. HINDS



The New York City Central Labor Council hopes to see a plan both equitable and good for development. We believe labor standards and pathways to apprenticeships are the best way to raise the floor on wages and workplace standards, and one of the best policy tools for combating wealth inequality. With over \$1 billion of taxpayer money for the creation of 421-A housing, there should be a piece for the working people of New York City. The renewal of 421-A presents an opportunity for a more equitable development plan. Thank you for your time and consideration.

## FOR THE RECORD

Good morning Councilmembers. My name is Isaac Bowman and I am here in support of the Mayor's amendments to 421-a. It adds stronger enforcement for the prevailing wage and covers more building service workers.

I am a ~~residential~~ concierge at a residential building called The Exo in Astoria, Queens.

I have worked at The Exo for almost a year and I make \$10.50 an hour with no benefits. Under the terms of the 421-a tax break the Exo gets, I should be making the prevailing wage, which starts at \$16.88 an hour and getting the equivalent of full-family healthcare. And I should be on track to get up to the full prevailing wage rate of \$22.50 an hour, not including benefits, after more time on the job.

But because management is not meeting the prevailing wage obligation, my wife, my step-child and I receive public assistance in order to pay the bills and put food on the table. I am a U.S military veteran. I supported my country and its not right that now that I am home I cannot support myself and my family.

Prevailing wage for building service workers in buildings receiving 421-a is the law. But it is not being properly enforced.

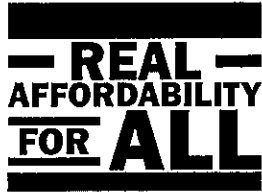
When I found out my building was receiving 421-a but not paying me the prevailing wage, I was upset. I struggle to support my family because I am being robbed of my wages. Meanwhile, the building owner is still allowed to get a big tax break.

We need real enforcement from the city.

This is why I supporting the Mayor's proposal for 421-a renewal. It adds strong enforcement for prevailing wages. This will be good for me, my co-workers and our families.

The Mayor's proposal will also expand prevailing wage so that more building service workers are covered. This will help more workers support their families and afford to call New York City home.

Thank you.



Good morning (afternoon). My name is Maritza Silva-Farrell and I am testifying today on behalf of the Real Affordability for All coalition – the largest affordable housing coalition in the city, comprised of more than 50 housing organizations.

I would like to thank the committee for the opportunity to testify today.

Displacement, gentrification and the growing income inequality in our city are key issues that our communities are facing every day, and while we hear stories of families being evicted from their homes, and workers being victims of wage theft, we also hear that a single penthouse got sold for more than \$100 million – more money than 99.9% of New Yorkers will ever see. The most expensive apartment in the city received subsidies from the 421a program. There are many awful examples of how 421a wastes taxpayer dollars on developers and projects that do not need it, and provides no benefit to the city of New York.

The 421a tax exemption and abatement program was created as an incentive for residential development in the early 1970's at a different economic time of massive disinvestment and flight from the City rather than the current investment and urban renewal we are seeing today. Since then, as the City's economy improves and the real estate industry booms, the program is no more than a massive taxpayer giveaway to luxury developers for the construction of primarily, luxury housing.

Not only is this a complete give away of precious tax dollars to individual developers, these luxury buildings inflate real-estate prices, create market pressures that lead to higher rents and push out residents in neighborhoods like downtown Brooklyn, Western Queens, and Harlem where many of these new developments have concentrated.

More recently, we have the additional displacement crisis whereby residents in the neighborhoods expanding out from the Manhattan's core are being displaced which in turn has created a housing crisis and generated additional pressure and displacement of outer borough neighborhoods that have always been a home for the low and moderate income New Yorkers who are the back bone and underlying engine to the now flourishing New York's economy.

It is clear that New Yorkers are not getting their money's worth from the 421-a tax break. Several studies have determined that it is costing the city more than \$1.1 billion a year. A recent study by the Community Service Society finds that 421-a costs one million dollars per affordable apartment created. Only 12,500 of the 150,000 residential units receiving the subsidy in the last fiscal year are affordable. The same developers who are not creating

affordable housing are also benefiting from the subsidy while workers in the industry have been victims of wage theft and unpaid back wages.

421a is a misguided tax policy that must end. The idea that the City provides tax subsidies for luxury development is a slap in the face to all New Yorkers who work and pay their taxes. There is no justification for this indirect affordable housing development debacle at a time when developers "cannot build fast enough." There are other ways to spend the over \$1 billion the city gave away to billionaire developers last year, including collecting taxes and using those funds directly to finance an affordable housing program that is designed to build at income levels where the largest gaps of affordable housing are well-documented; the lowest 50% of New Yorkers. Tax dollars could actually be directed to help the people who need it. They could be used to insure that through an affordable housing building initiative good jobs are created that lead to long-term, middle class careers. For example, building housing at the right income levels and paying good, career oriented living wages are two direct ways to increase the economic viability of the entire city and all of its residents.

To do this, we must rethink all of the City's subsidy programs and create the kind of smart standards for affordable housing and job quality that deliver the outcomes we need for the entire city. The excuse that 421a is needed to incentivize developers if building is to continue in New York City is inaccurate given the current economy.

We applaud Mayor de Blasio's effort to champion a mansion tax, take condos out of the 421-a program, and eliminate discriminatory poor doors. But 421-a is still a failed and wasteful program that should be ended, not amended. It is also a driving force of corruption in Albany, and tied directly to the unethical actions of Glenwood Management and other billionaire developers.

Efforts to fix 421-a in the past have been unsuccessful. The program is beyond repair and beyond reform. The facts are clear: 421-a primarily funds luxury housing for the wealthy elite while fueling gentrification, displacement and low wage jobs.

Rather than tweaking 421a that has done nothing to provide apartments for low and moderate income New Yorkers and has in fact increased unaffordability, we must pressure Albany to end the devastating practice of deregulation NOW. The rent stabilization laws provide the largest source of protection to affordable housing in New York. By strengthening the rent laws, eliminating 421a, and requiring that building in New York City includes well-paying jobs and labor standards, we can control what gets built by whom and have a more direct impact on the appropriate redevelopment and revitalization of all New York City neighborhoods.

Thank you

**UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA**  
**NEW YORK CITY & VICINITY DISTRICT COUNCIL OF CARPENTERS**

**JOSEPH A. GEIGER**  
Executive Secretary - Treasurer

**STEPHEN C. McINNIS**  
President

**MICHAEL P. CAVANAUGH**  
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June 1, 2015

**The Mayor's Proposed Amendments to the 421-a Tax Benefit Program**

Good Morning. Thank you Chair Williams and all Councilmembers present, for allowing me to speak today. My name is Dwight Chaparro and I am here representing the New York City & Vicinity District Council of Carpenters, a representative body comprised of eight individualized locals, and over 23,000 members.

I am a resident of Brooklyn, NY and a new member of the Carpenters Union, having worked in the nonunion sector at the start of my career. I was disappointed when I heard the Mayor opposed paying workers a prevailing wage on 421a projects, as I've experienced firsthand the exploitative and dangerous conditions on nonunion jobsites. As a nonunion carpenter working in the concrete industry, I was putting my life at risk each day, all for a wage that could not sustain my family. I worked exclusively on residential projects during my time in the nonunion sector, some of those projects being 421a projects including 429 Kent Ave in Brooklyn. On many of these jobs, I saw workers being paid \$12 with no benefits. Oftentimes, we were not required to wear safety glasses or vests. There was one instance where 50 workers on a jobsite did not receive their 10 hour OSHA training. DOB subsequently inspected the site, and made sure the workers got their cards. Dangerous equipment would be left lying around, such as nail guns meant to drive through concrete. We could not take off when we were sick out of fear of being fired. The Mayor should understand that when he says he opposes prevailing wages for construction workers, he is complicit in this exploitation.

After becoming a member of the Carpenters Union, my life changed dramatically. I no longer live paycheck to paycheck, and can afford things other than the bare necessities. I also receive benefits, something that was never provided in the nonunion sector. I no longer have to worry about my retirement or how I will afford medical bills if I ever become ill. In addition to economic stability, I have also gained peace of mind over my own wellbeing. I now feel safe in the workplace. As a nonunion worker, I was always concerned for my safety and the safety of others on the site. As a union member, I feel like I am a part of a community where everyone looks out for each other. Safety rules are strictly enforced and extensive training is provided.

More nonunion workers should be given the opportunity to enter the union sector. They should be able to access training and healthcare and retirement security. The Mayor is denying them all of those things when he says he opposes prevailing wages for construction workers on 421a projects.



# BUILDING & CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK

**GARY LaBARBERA**  
PRESIDENT

AFFILIATED WITH THE  
BUILDING CONSTRUCTION TRADES DEPARTMENT  
OF WASHINGTON D.C.

BUILDING AND CONSTRUCTION TRADES COUNCIL  
OF NEW YORK STATE

AMERICAN FEDERATION OF LABOR OF CONGRESS  
OF INDUSTRIAL ORGANIZATION

**Building and Construction Trades Council  
Housing and Buildings Committee Hearing on Mayor's 421A Proposal  
June 1, 2015**

My name is Santos Rodriguez and I am testifying on behalf of Gary LaBarbera and the Building and Construction Trades Council of Greater New York which represents 100,000 unionized construction workers.

I want to start by thanking the Housing and Buildings Committee members and Chair, Councilmember Williams, for this oversight hearing on Mayor de Blasio's proposed 421a plan.

The Building Trades has been an advocate for 421A reform for a number of years supporting deeper, more substantive affordability, and wage standards on large, majority market rate, tax subsidized developments. We disagree with the Mayor's position that developers should not be required to provide good wages, benefits and a path to the middle class for construction workers in order to receive the tax breaks 421a provides.

These are the facts: 421a tax subsidies have failed to achieve the primary goal of creating any real affordable housing. 421a remains to be a billion dollar a year tax giveaway to developers building mainly market rate, luxury housing without any requirements for labor standards for those construction workers that risk their lives every day to build our City.

***There is a misnomer out there, perpetuated by a developer paid media campaign, that prevailing wages would impede the ability to build affordable housing. That couldn't be further from the truth. We have researched 421a subsidized buildings from 2010-2013 and found that the majority of buildings, with more than 50 units, are already being built paying the prevailing wage of the industry, which establishes that our prevailing wage requirement attached to 421a does not adversely impact the Mayor's affordable housing program.***

Construction remains to be one of the most dangerous industries to work in, it was only a few short weeks ago I was here before you speaking about an individual who lost their life from a fall down an elevator shaft. The Mayor recognized this in his 2015 Management Report which found that during this reporting period the Department reported 93 construction-related injuries and 86 construction-related accidents, an increase of 39 percent and 21 percent, respectively from the same period studied in 2014. In 2012, 79% of fatal fall construction accidents investigated by OSHA in New York occurred at nonunion construction sites. A prevailing wage for workers that risk their lives every day should not be opposed by anyone who cares about workers.

We need to change the 421A program. A simple extender of the current program is unacceptable. We ask the Council to support us in these efforts.

Thank you for the opportunity to address the committee today.



# JOINT COUNCIL No.16

INTERNATIONAL BROTHERHOOD OF TEAMSTERS



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**Committee on Housing and Buildings Hearing on the Mayor's 421a Plan  
Teamsters Joint Council 16 Testimony  
Monday, June 1<sup>st</sup>**

My name is Bernadette Kelly and I am here on behalf of George Miranda, President of the Teamsters Joint Council 16, representing approximately 120,000 hardworking men and women in the New York State.

I want to begin by thanking the committee on housing and buildings and the chair, Councilmember Williams, for this hearing on the Mayor's 421a proposal.

The Teamsters represent workers in a number of public and private industries: school safety, NYCHA workers, heating oil, sanitation, horse carriages, construction, air freight and maritime cargo; you name it, the Teamsters most likely represent workers in it.

As many of our members have been priced out of New York City, particularly as they start families, we recognize the value of the Mayor's ambitious affordable housing retention and creation goals. We support reforming the 421A tax subsidy to provide a deeper affordability and eliminating the exclusionary zones for mandated affordable housing percentages.

However, there needs to be prevailing wage standards as part of the requirement for all workers-both during construction and post construction. This tax break saves developers millions of dollars a year, New York City forgoes over a billion dollars a year in tax revenue, yet currently 421A creates a dismal amount of actual affordable housing and too often has subsidized luxury development, driving up neighborhood real estate values, and further exacerbating the housing crisis.

The Teamsters Joint Council 16 respectfully requests that the Administration and members of the New York City Council support the inclusion of wage standards for construction workers as part of any 421A reform policy.

**Bertha Lewis, President of The Black Institute**  
**New York City Council Committee on Housing & Buildings Testimony**  
**Oversight of Proposed Amendments to the 421-a Tax Benefit Program**  
**June 1, 2015**

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Good morning, and thank you Chair Williams, committee members and other Councilmembers present for the opportunity to testify today. My name is Bertha Luis, and I am the President of The Black Institute, an action-tank whose mission is to shape intellectual discourse, dialogue and impact public policy uniquely from a Black perspective.

Let me begin by stating the obvious: the 421-a program is failing tenants, taxpayers, and workers in this minority-majority industry.

It is squandering public resources on luxury housing that working families have no business paying for. And by boosting luxury construction in neighborhoods where existing residents cannot afford it, at construction salaries below the prevailing wage, the 421-a program is actively promoting displacement and inequality.

The average New Yorker would be horrified to learn that an “80/20” subsidy means 80% luxury housing and not the reverse. And they would be ashamed to learn that this unaffordable housing was created by workers frequently denied the wages they deserve.

The history of 421-a explains why it is such an outdated program out of synch with our economic needs – because it was designed in a radically different era: The 421-a tax abatement program was created in the early 1970’s to encourage development in New York City at a time where there was a massive population outflow to the suburbs.

Today’s housing needs have changed dramatically, and there is no place for corporate welfare in our city. Developers receiving \$1.1 billion a year in public subsidies should be required to build more affordable housing and pay middle class wages to all workers.

In a city that has so many people living in poverty, we do not need to choose between good wages and affordable housing. We need both, and we know that it can be done. Mayor Bill de Blasio’s affordable housing plan was announced last year at a project in Brooklyn built by union labor and contractors paying middle class wages, where half of the housing is affordable.

We also need to take steps to boost minority and women owned business (MWBE) participation in an industry where the African American community remains underrepresented, and where “men in skirts” fraud remains rampant.

This administration should take every opportunity to address income inequality. We cannot pit one worker against the other by paying prevailing wages to some and not others. Construction is one of the most dangerous jobs in the City. These workers deserve a living wage, and they deserve to live in the communities they’ve helped build. If there



is a standard, it should be the same standard across the board. We are not talking about building 80% affordable and 20-30% market rate. We are talking about the opposite. Income inequality cannot be addressed if worker's incomes are not raised.

In light of this inequity, it's time to reform this program or end this abuse of the public's trust altogether.

Testimony of Erika Glenn-Byam before the meeting of Committee on Housing and Buildings

June 1st, 2015

*Re: Oversight – The Mayor's Proposed amendments to the 421-a Tax Benefit Program*

Good afternoon council, and thank you. My name is Erika Glen-Byam. I am a veteran , a proud Brooklyn resident, and a union laborer. I am concerned that we are missing a real opportunity with 421a - opportunities for more women in construction. Women in construction nationally represent only 3%. African-American women .2%. Point 2! In our apprenticeship program at the Laborers we are 13% women...9% of whom are black or Latino. We are leading the nation with numbers like that. With pre-apprenticeship programs into the trades, like Non-Traditional Employment for Women, we can continue to grow, but not without jobs to send us out to work on. Good, safe jobs with prevailing wages. Public subsidies like 421a should be used to ensure that those opportunities provide a pathway out of poverty and into the middle class.

There is no reason to believe that we have to sacrifice workers to have affordable housing. The governor doesn't think so, many community and housing groups don't think so, my neighbors don't think so, my union brothers and sisters don't think so, and I hope you don't think so. I'd like to believe that the Mayor is willing to stand up for the rights of all workers. I remain hopeful that he will consider what it means to be able to pay your bills on time, afford the ever increasing rent of my neighborhood (because

even with more units coming the rents keep rising), and the peace of mind of going to work each day on the safest jobsite possible.

As a resident of East NY I am excited that a lot of affordable housing is going to be built where I live - we need it. But I am also acutely aware of the need for jobs in my neighbor, and not just some part time job that shoots you up and then right back down the ladder - a good job. A job which provides the opportunity for further employment, a job which offers support and training, a job with health insurance, a job that enforces safety regulations so we can make it home to our families at the end of the day, a job which pays a wage that actually adds up to enough money to rent, or maybe even buy, one of these affordable homes...a career. We can fix 421a for all New Yorkers, not just the powerful, but instead bring power to the powerless. Projects receiving public subsidies should not be built on the backs of workers, and over a billion dollars is a lot of money to be giving away without ensuring that it benefits all New Yorkers.

Testimony of Paris Simmons before the meeting of Committee on Housing and Buildings

June 1st, 2015

*Re: Oversight – The Mayor's Proposed amendments to the 421-a Tax Benefit Program*

Good afternoon –

Thank you for granting me the opportunity to testify today. My name is Paris Simmons, and I am here to speak about the importance of real career opportunities and family sustaining wages when it comes to trying to make a good life here in New York City, but even more crucially, when it comes to trying to rebuild your life.

I am a member of Laborers Local 79. Union construction is one of the very few opportunities for people like me, who served time and want a second chance, to make the life we didn't make before because we were young and made a mistake. Not only does the union not discriminate, they work directly with the Osborne Association to mentor and guide potential candidates through the necessary life skills it takes to make it in this business. Coming back is not easy, and having a brotherhood - a sisterhood, to belong to and watch each others backs, while earning a living you can be proud of and return that to your community and your family is indispensable. Earning prevailing wages has meant that I can help my family and support the local shops and restaurants on 169th street in the Bronx, I can be a role model for the young people in my life and

I have to wonder why it is that the Mayor's proposal on 421a seeks to protect the wages and careers of some while ignoring others. Those of us who remediate, demolish, and build New York do so with our bodies. We lift, carry, heave, crawl, smash, grind, and pour bricks and cement every day we can. And I say we can because construction is not a job like other jobs. You work when there is work, and then you wait, and then you work - sometimes an 80 hour week to get the job done, and then you wait. Prevailing wages are a way of ensuring we can still make a decent living, afford one of the "affordable" apartments the city sees we so badly need.

I am also shocked that there is no mention of safety or apprenticeship requirements in the Mayor's proposal. Just last month a worker fell to his death on 8th Avenue and 46th street. Construction injuries, and even death, are a reality of our jobs. But at our school, where we receive thousands of hours of free training, one thing is emphasized in every single class. Safety, Safety, Safety. Every worker deserves that kind of protection.

We need to be getting the most from our public dollars by having good contractors provide career pathways, open to all people, in our neighborhoods, while building quality homes. Prevailing wages and apprenticeship requirements with real affordability and local opportunities for workers does not seem like too much to ask for in return for billions of public dollars.

Testimony of Ana Taveras before the meeting of Committee on Housing and Buildings

June 1st, 2015

*Re: Oversight – The Mayor's Proposed amendments to the 421-a Tax Benefit Program*

Good afternoon council, and thank you. My name is Ana Taveras. I am here today to voice my concerns about the Mayor's proposed amendments to 421-a. I have to tell you in all honesty I was shocked when I learned the specifics of the proposals. While I was glad to hear that certain workers are going to be guaranteed their industry wages, I can't understand why others are being left out. I am a union construction worker and an organizer. I struggled for far too long working retail, ....., and taking on two or three jobs at a times, to make ends meet. I faced eviction, and worried how I would feed and clothe my daughters. Now, as a single mother, I am the able to provide my family with what they need to not only survive, but to succeed. The pride that I feel about that translates to my daughters - it has helped them to believe in themselves and to

I also can tell you that having the protection of the union as a woman on the jobsite is not something that should be overlooked. Many more women are entering the construction industry each year, but not enough are staying. It is a slow changing culture that should be protected at all costs. Where else, with little more than a high school diploma and the desire to work hard, can a woman earn a decent middle class living?

Let's not talk about why some wages are too high when they only honestly just begin provide a pathway out of the struggles of poverty. Let us instead keep focused on maintaining what we have achieved and using every government dollar we can to extend that benefit to more people.

I am also a member of the Steering committee for the Bronx rezoning. I meet bi-weekly with Casa and other members of the community where I grew up to discuss our vision of the proposed rezonings, and I can tell you that good paying jobs are just as important as affordable housing.

Additionally, I am an organizer for the Laborers Eastern Region Organizing Fund. I see vulnerable workers being taken advantage of on NYC Affordable housing projects almost every day. With three quarters of all construction accidents happening on non-union, non-prevailing wage jobs, and more than ½ construction injuries happen to Latino workers, it is clear we need to take action to provide a safer and fairer environment



**Testimony of Tom Waters  
Housing Policy Analyst, Community Service Society**

**Oversight Hearing:  
The Mayor's Proposed Amendments to the 421-a Tax Benefit Program**

**New York City Council Committee on Housing and Buildings**

**June 1, 2015**

Thank you for this opportunity to comment on the de Blasio administration's proposed changes to Section 421-a of the Real Property Tax Law and its exemptions from New York City property tax. The Community Service Society is an independent nonprofit organization that addresses some of the most urgent problems facing low-wage workers and their communities here in New York City, including the effects of the city's chronic housing shortage.

As I testified before this committee in January, CSS believes that the 421-a developer tax break should be ended because it costs \$1.1 billion a year and delivers only a pittance of affordable housing. I also argued against trying to reform 421-a by tinkering with its requirements, because this approach will never create a mechanism that reliably ties the cost of the tax exemption for a given development to the benefit that the city will receive from the affordable housing included.

The de Blasio administration's proposal does not do enough to alleviate these concerns. It would modestly increase affordability requirements but at far too high a cost in terms of lost revenue. It is not at all clear that these changes will make 421-a more rather than less efficient. It certainly won't make it into the sort of program would ever pass muster as good policy were it not backed by a rich and powerful interest group such as the real estate industry.

But this proposal has recently become a political football in Albany in an unhelpful way. Although the Community Service Society is here to explain this proposal's defects, this should not serve as an excuse for maintaining the status quo on either the 421-a tax exemption or the needed strengthening of rent control and rent stabilization. Renewing 421-a as it stands is no solution, and there is no more important issue before the Governor and state legislature today than the need to halt the erosion of our rent and eviction protections through vacancy decontrol.



The de Blasio administration's 421-a proposal does four main things. First, it *roughly doubles the value of the tax exemption* extended to developers, by increasing the term of the exemption to 35 years, where exemptions now run 10 to 25 years, depending on location, affordability options, and the use of other subsidies.

Second, it *modestly increases affordability requirements* by deepening the income requirement for some units from 60 percent of "area median income" to 40 percent (roughly equivalent to lowering rents from \$1,200 to \$800) and by adding a requirement for units at a new target income level of 130 percent of area median income or roughly \$100,000 a year. This results in apartments with rents around \$2,500 per month.

Third, it *eliminates the "Geographic Exclusion Area" approach* to affordability requirements in favor of one based on developer option. Currently, developments within the GEA include affordable housing and those outside it do not. Under the new plan, developers citywide can choose to include either 25 percent affordable apartments, with 20 percent at the deeper affordability levels, or 30 percent affordable apartments, all at the \$2,500 a month level. (There is also a third option for developers who also use the full range of non-421-a subsidies to create more affordability.)

And fourth, it *eliminates benefits for condos*. This will increase the program's efficiency, but less than one might think, because condos are relatively lightly taxed anyway.

The administration projects that these provisions will lead to the creation of 9,500 apartments in the \$800 to \$1,200 range over ten years, plus 16,000 apartments in the neighborhood of \$2,500 per month.

They also project that the present value of the 35-year tax exemption granted to each apartment will be \$391,000 in the first year. This suggests that the total tax benefit over the life of the exemption will be at least twice that, but that exemptions in the later years are discounted because of the time value of money. This makes sense when considering what the offer looks like to the developer, but from a city budget point of view, the simple total amount is also a relevant figure. In any case, it means that the taxes forgone per affordable apartment will be roughly the same as the current \$833,000, even though many of the apartments will be affordable at higher income levels.

How bad a deal is this? The answer depends on whether we are talking about the \$800 to \$1,200 apartments or the \$2,500 ones. For the lower-rent apartments, the present-value cost of \$391,000 is more than the typical cost of constructing the apartment, but the city argues it is worth

it, because we are creating income diversity in a desirable location. But we should remember that in virtually every case, these buildings will be built not just with the 421-a tax subsidy but also with low-interest financing backed by tax-exempt bonds and with the federal Low Income Housing Tax Credits that come with bond financing. When we consider this additional subsidy, the total package starts to look less efficient. CSS agrees with the city that it is sometimes appropriate to use additional subsidy resources to create income diversity and especially to protect low-income communities when neighborhoods change. But this does not mean that the sky is the limit when it comes to costs.

The trade-off of tax subsidy for affordability benefit is different when we consider the higher-rent affordable apartments. To commit tax exemptions with a present value of \$391,000 for those apartments is not a good deal, even without additional subsidy, because in some cases those apartments will be renting only a little below market, or even at market rents. Affordability at these levels should not cost very much to produce. What's more, the benefit of this affordable housing is steered to a segment of the city population that is not severely stressed in the housing market. As Victor Bach and I showed in the recent CSS report, "Reinventing the Mitchell-Lama Housing Program," few households with incomes in the neighborhood of \$100,000 a year (130 percent of Area Median Income) pay more than 30 percent of their incomes in rent. In fact, most families in this income range would not consider a rent of 30 percent of income to be a bargain.

The administration's proposal's emphasis on assisting households in this income range is misplaced, and the amount of tax subsidy that would be devoted to each one of them is also inefficiently high, even if we assume that the average subsidy for these apartments would be somewhat lower than the average for 421-a apartments as a whole.

The geographic effect of the proposed changes to 421-a is complicated and difficult to predict, but it is also important, and I believe it is likely to work out as follows. In the very highest-rent areas of the city, developers will either choose the 25 percent affordable option, also using tax-exempt bond financing, or build condos without 421-a. This will result in apartments at the \$800, \$1,200, and \$2,500 a month levels, subsidized partly by 421-a and partly by the bond financing. This is indeed somewhat better affordability than the city is getting now in these areas, but it will also come at a much higher cost than the present 421-a.

In much of the current Geographic Exclusion Area, including places like Harlem, parts of downtown Brooklyn, and western Queens, developers are likely to choose the 30 percent affordable option. (The city has projected that developments in Harlem will use the 25 percent affordable

option, but many market rents for new construction there are close enough to \$2,500 for the 30 percent option to be attractive there too.) These neighborhoods will see a significant number of apartments at the \$2,500 level in areas where that is below the usual market rent for new construction. This will provide benefits, but only to a fairly high-income group of people, and the total benefit will be much less than what the city is now getting in these areas. Again, the cost will be much higher than existing 421-a.

In an area beyond the current Geographic Exclusion Area, but where rents are still relatively high, developers will also choose the 30 percent affordable option. This will result in a significant number of apartments at the \$2,500 level, but this time in areas where that is close to the market rent for new construction. Thus there will be little immediate economic benefit to tenants at any income level, though the affordability requirement could become meaningful sometime in the future. And again, the cost will be much higher than existing 421-a.

And in areas of the city further from Manhattan, developers will build very little unless they are given additional subsidies beyond 421-a, just as is the case now.

A proposal to reform 421-a must be evaluated like any other policy proposal, including a consideration of costs and benefits. It is not enough to say that the proposal would create needed affordable housing so never mind the costs, nor should consideration start from the premise that whatever happens, the enormous flow of benefits to the real estate industry will continue. The relevant comparison is not between old 421-a and a new version – it is between the proposed new version and other means of reaching affordable housing goals.

We need to consider the total taxes foregone under 421-a over the full terms of the tax exemptions. We need to consider how many apartments will be produced at different affordability levels, and where these apartments will be. And we need to consider how much money in additional subsidies, including bond financing and associated federal tax credits, will also be used to create these affordable apartments. In the case of existing 421-a, we can look at actual numbers and see how poorly it is performing. Based on the information presented on the administration's proposal so far, it is not clear that it is any better.

# **WHY WE NEED TO END NEW YORK CITY'S MOST EXPENSIVE HOUSING PROGRAM.**

## **POLICY BRIEF**

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### **NEW YORK'S UNAFFORDABLE HOUSING PROGRAM: TIME TO END 421-A**

Tom Waters and Victor Bach, Community Service Society of New York

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May 2015

# NEW YORK'S UNAFFORDABLE HOUSING PROGRAM Time to End 421-a

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By Victor Bach and Tom Waters



**The Community Service Society of New York (CSS)** is an informed, independent, and unwavering voice for positive action representing low-income New Yorkers. CSS addresses the root causes of economic disparity through research, advocacy, and innovative program models that strengthen and benefit all New Yorkers.

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### About the Authors

**Tom Waters** has been a Housing Policy Analyst at the Community Service Society since 2005. Prior to joining CSS, Mr. Waters was at Tenants & Neighbors, an organization that works to preserve and improve the state's existing stock of affordable housing. He has a M.A. in political science and is working on a doctoral dissertation on housing and neighborhoods at the City University of New York Graduate Center.

**Victor Bach** has been Senior Housing Policy Analyst at the Community Service Society since 1983. He was a Research Associate at the Brookings Institution and on the faculty of the New School for Social Research and the LBJ School of Public Affairs at the University of Texas, Austin. He holds a Ph.D. in Urban Studies & Planning from M.I.T.

## Introduction

New York City's 421-a tax exemption, which sunsets on June 15, 2015, is a relic of a past time, costing the city an enormous amount of lost revenue while contributing very little to affordable housing. Attempts to reform it have failed, and the potential for future reform is limited because the exemption does not provide a mechanism for matching the amount of the tax foregone to the value of the affordability created. Rather than renewing it, the state legislature should allow it to expire and replace it with a new program built around an explicit mechanism tying the cost of the tax subsidy to the public benefit in terms of affordability.

The original 421-a was enacted in 1971 primarily to promote new residential investment in New York City at a time when private construction had stalled. Today, the city's economy has been transformed, and 421-a has been legislatively modified several times, but its rich as-of-right tax benefits live on, costing the city over a billion dollars a year in lost revenue. Although it is now often described as an affordable housing program, affordable apartments make up only a small fraction of the 163,000 units that received the tax exemption in 2014, and many of those apartments receive significant other subsidies, as well. The 421-a program primarily subsidizes market-rate, even luxury, housing.

The \$1.07 billion in foregone revenue due to 421-a in 2014 was the city's largest single housing expense. It is more than the entire budget of the city's Department of Housing Preservation and Development. It is more than the combined rents of all tenants in the New York City Housing Authority (NYCHA) and also more than NYCHA's federal operating subsidy that supplements those rents. It is more than the total amount of federal Section 8 housing vouchers that NYCHA administers. Indeed, if the billion dollars a year expended on 421-a were used to fund housing vouchers similar to Section 8, it would provide

homes for 100,000 of the city's poorest families. There is no question that the affordability benefits of 421-a fall far short of that standard.

While affordable housing advocates and good-government groups criticize 421-a for its high cost, its inefficiency as an affordable housing program, and its tendency to steer benefits to the politically powerful, proponents defend it by pointing out that it does create some affordable housing, by claiming that a tax incentive is still needed to build in New York City or that the removal of the incentive would be disruptive, or by arguing that the program can be made efficient through reform. Much of this paper is devoted to showing that the amount of affordable housing produced is far too low to justify the cost. It also argues that most of the benefits of 421-a are going to developments that would have been built without the subsidy, and that 421-a's inefficiency is deeply rooted in its structure and cannot be reformed away.

## Summary of Key Conclusions

- At \$1.07 billion a year, 421-a is the largest single housing expenditure that the city undertakes, larger than the city's annual contribution of funds for Mayor de Blasio's Housing New York plan.
- The annual cost of 421-a to the city exploded during the recent housing boom as a result of market changes, not because of any intentional policy decision to increase the amount of tax incentives for housing construction.
- Half of the total 421-a expenditure is devoted to Manhattan.
- The 421-a tax exemption is a general investment subsidy that has been only superficially modified to contribute to affordability goals.
- The 421-a tax exemption is extremely inefficient as an affordable housing program, costing the city well over a million dollars per affordable housing unit created.

- The reforms made to 421-a in 2006 and 2007 have not resulted in a significant improvement of 421-a's efficiency as an affordable housing program.
- A large share of buildings that receive 421-a and include affordable housing also receive other subsidies, such as tax-exempt bond financing. Affordable units in these buildings cannot be credited entirely to the 421-a program.
- The great majority of the tax revenue forgone through 421-a is subsidizing buildings that would have been developed without the tax exemption.

## Policy Recommendations

- Allow 421-a to expire when it sunsets on June 15, 2015.
- Replace it with a targeted tax credit or other new incentive that is structured to provide benefits only in proportion with a building's contribution to the affordable housing supply.

## History and Design of the 421-a Tax Exemption

The 421-a tax exemption was born in 1971,<sup>1</sup> a time when private housing investment in New York City was lagging. The city was sometimes seen as part of the Rust Belt, and planners were alarmed by the exodus of high earners for the suburbs. Private housing starts fell from over 45,000 houses or apartments per year in 1961 and 1962 to 10,000 or fewer from 1968 to 1970. The city and state of New York responded by enacting 421-a to incentivize residential investment in the city and make it more competitive with the suburbs and Sun Belt locations.

As originally conceived, 421-a did not have a strong affordability mission. Because New York City appeared to be suffering in competition for investment with other cities and with the suburbs, and because residential construction was perceived as lagging relative to non-residential development, the reasoning went, property tax exemptions should be directed to any and all residential development,

increasing the expected cash flow from new apartment buildings in the city. Thus the design of the exemption was reasonably well matched to the perceived supply problem that it was supposed to correct.

By the middle 1980s, the city's development picture, especially in Manhattan, had improved considerably. There was concern that 421-a had become a giveaway to developers, as illustrated by Mayor Ed Koch's unsuccessful attempt to block benefits for the Trump Tower condominium on Fifth Avenue in 1984.<sup>2</sup> The influential housing expert George Sternlieb was quoted in the *New York Times* a few years later suggesting that 421-a was not effective in stimulating construction because land prices had risen to reflect the additional cash flow due to the tax exemption, steering benefits to landowners and removing the incentive to develop. "My guess is that the existence of 421-a basically raised the land costs," he said. "All these deals are penciled backwards, and 421-a made it possible for landowners to raise prices."<sup>3</sup>

Lawmakers responded to this situation in 1984 by making changes to 421-a. Exemptions in a large part of Manhattan were ended in 1985, but the city was given the power to allow exemptions in that area for buildings that provided affordable housing directly or indirectly. Instead of curtailing 421-a, then, lawmakers gave it a new justification by adding provisions related to affordable housing. Under rules that took effect in 1987, buildings in a "Geographic Exclusion Area" or GEA in Manhattan from 96th Street down to Houston Street on the West Side and 14th Street on the East Side could obtain the exemption only by either including affordable apartments in the new building or by steering money to off-site affordable developments through a certificate sale program.

In the off-site program, now being phased out, developers built affordable housing, generally in low-income areas, and applied to the city for four or five certificates per apartments built, depending on the degree of affordability. The developers then sell the certificates at market prices to other developers who are building market-rate developments and want to receive 421-a. The affordable

developers use the proceeds to repay their construction loans, and the market-rate developers can develop one tax-exempt apartment per certificate they buy. (Recently, 421-a certificates were selling for \$20,000 to \$40,000 each.)

The 1984 changes to the law turned 421-a into a hybrid affordable housing program and pure development subsidy. They did steer needed money to affordable housing development, but they did so in a way that would never have been designed if subsidizing affordability had been the prime concern.

### **As originally conceived, 421-a did not have a strong affordability mission.**

One problem with the new design of 421-a was that its affordability component did not include any provision for matching the value of the tax exemption with the affordable housing benefit. Both of these values are clearly related to the value of the building's site, but there is no reason to expect them to line up. In cases where the value of the expected tax exemption is less than the income foregone by accepting lower rent on the affordable apartments, the developer can forego the exemption or not build the development. In cases where the exemption is worth only a little more than the foregone rent, the development will be built with 421-a, and the foregone taxes will be approximately reflected in the added affordability. And in cases where the tax exemption is worth much more than the foregone rent, then the developer (or more likely the original landowner) will receive a windfall.

Another problem with the program was that it assumed the market conditions of 1985 as the basis for a long-lived program. During the period from 1985 to 2008, the economics of building housing in Harlem, lower Manhattan, and the inner areas of Brooklyn and Queens

was utterly transformed, but the 421-a tax exemption for these areas did not change, leading to the devotion of many hundreds of millions of dollars in tax expenditures to 100 percent market-rate developments in areas that were just as profitable as the core Manhattan area subject to the 421-a affordability requirements—in some cases, more so.

In 2006 and 2007, legislators (first in the New York City Council and then in the state legislature) finally responded to these problems. They eliminated developers' option to locate the affordable housing off-site through the certificate program and expanded the area where affordability requirements apply. The Geographic Exclusion Area (GEA) now covers all of Manhattan and large areas of Brooklyn, as well as scattered areas of the other boroughs. The choice of areas to include in the GEA was essentially political and has been extensively criticized, including by city housing commissioner Vicki Been.<sup>4</sup> But the expansion of the GEA represented an attempt to improve the alignment of the tax incentive with affordability goals. Unfortunately, it has so far had a minimal effect on the production of affordable housing, as we will show below.

In its current form, 421-a provides for several different types of exemption.

- **Within the GEA**, comprising Manhattan, brownstone Brooklyn, and a few other neighborhoods, a developer can obtain a 20-year 421-a exemption by including apartments on site that are affordable to households with incomes of \$46,600 per year for a household of three,<sup>5</sup> implying a rent of \$1,165 per month for a two-bedroom apartment. Twenty percent of apartments in the building must meet this affordability standard. In return, there will be no property tax on the estimated market value of the building up to about \$188,000.<sup>6</sup> There will still be property tax on the value of the land and on the building value above \$188,000. This exemption will be in full force for twelve years, then phase out over eight years.
- **Within the GEA**, a developer may still be able to obtain a 10-year 421-a exemption by purchasing 421-a certificates



(one for each apartment) that were created when another developer built affordable housing elsewhere in the city. No more of these certificates are being created, and there are probably very few still available. This exemption will be in full force for two years, then phase out over eight years.

- Within the GEA, a few developers may still obtain 10-year 421-a exemptions without providing any affordable housing at all if they are outside the pre-2008 GEA and received the necessary building permit before June 30, 2008.
- Outside the GEA, a developer can obtain a 15-year 421-a exemption with no affordability requirement. This exemption will be in full force for eleven years, then phase out over four years.
- Outside the GEA, a developer can obtain a 25-year 421-a exemption by including apartments that are affordable to households with a range of incomes, but averaging \$62,000 a year. This exemption will be in full force for 21 years, then phase out over four years.
- Throughout the city, developers are also able to obtain 421-a tax exemptions in combination with other forms of subsidy that are allocated competitively by government agencies.

### Expense of the 421-a Program

In fiscal year 2014, New York City spent \$1.07 billion in 421-a tax expenditures to support the construction of buildings with a total of 163,000 units, as reported in the city's own Annual Report on Tax Expenditures. Most of these units are apartments, but some parking and storage spaces also qualify.

As Table 1 shows, the 421-a tax expenditure is the city's largest housing cost, far larger than the entire annual expense budget for the city's Department of Housing Preservation and Development. Although it is less than the total budget for the New York City Housing Authority, it is larger than any of NYCHA's three largest funding streams: tenants' rents, the federal public housing subsidy, and the federal subsidy for Section 8 vouchers.

The de Blasio administration estimates that its "Housing New York" plan to build 80,000 and preserve 120,000 units of affordable housing will cost \$41.1 billion over ten years, but most of that will come directly or indirectly from the federal government. The plan projects that the city and its arms will contribute \$8.2 billion over ten years—an annual contribution that is less than the revenues foregone through 421-a.

**Table 1: Selected housing expenditures in New York City**

City Funding		Federal Funding	
PROGRAM	COST	PROGRAM	COST
421-a construction tax benefit	\$1,073 million	NYCHA Section 8 vouchers	\$934 million
City share of HPD capital	\$320 million	NYCHA-operated housing	\$830 million
J-51 improvement tax benefit	\$259 million	HPD Section 8 vouchers	\$317 million
City share of NYCHA capital	\$69 million	Federal share of NYCHA capital	\$259 million
City share of HPD expense	\$59 million	CDBG share of HPD expense	\$197 million
		Federal share of HPD capital	\$44 million

Each figure is for Fiscal Year 2013 or 2014. Sources: New York City Department of Finance, Annual Report on Tax Expenditures, 2014. The City of New York, Adopted Budget Fiscal Year 2015: Expense, Revenue, Contract. The City of New York, Adopted Budget Fiscal Year 2015: Capital. New York City Housing Authority, Adopted Budget for FY 2015 and the Four Year Financial Plan FY 2016–2019.

These comparisons demonstrate the outsize prominence of 421-a among the city's housing activities, and they imply a high standard for the amount of social benefit such a large expenditure should provide.

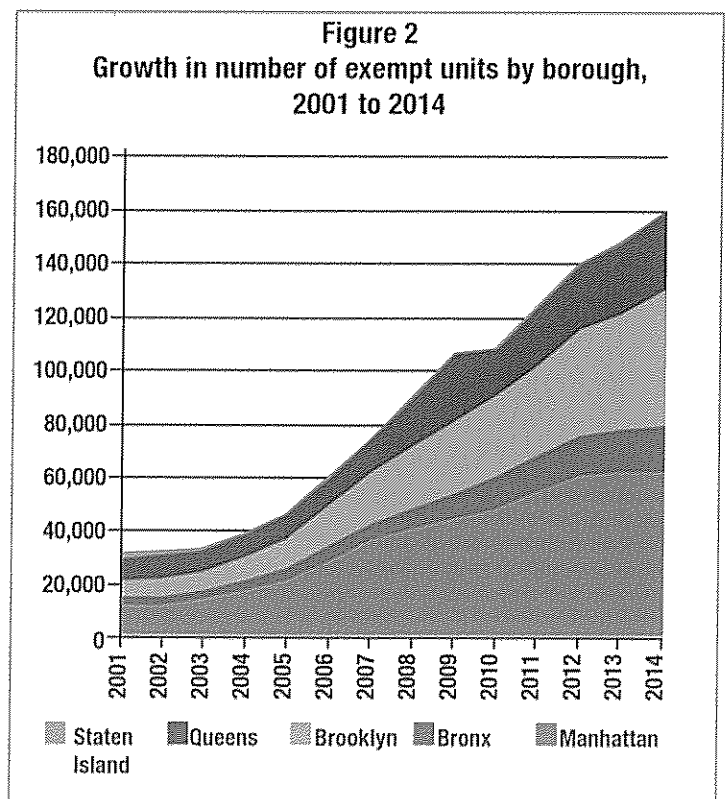
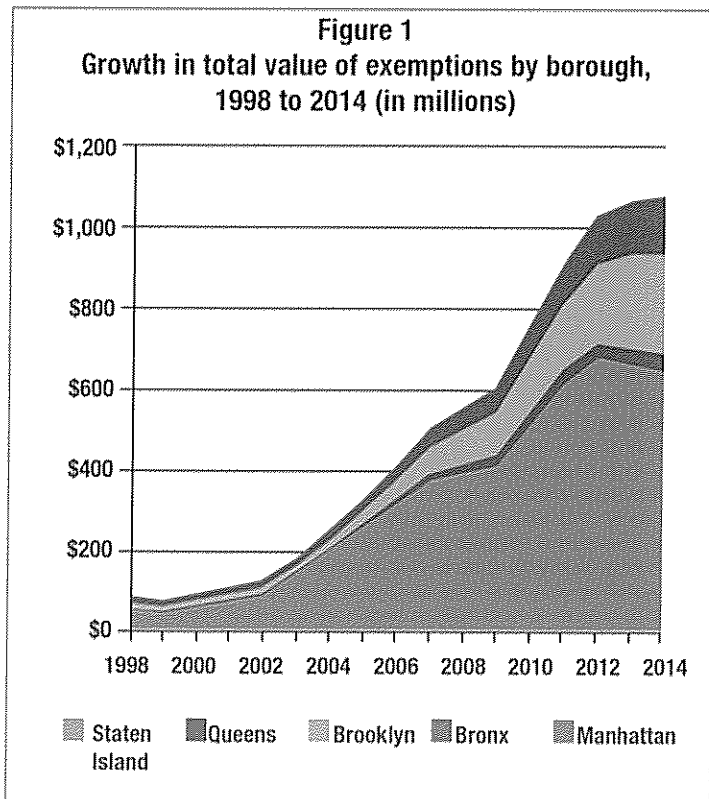
### Growth and Distribution of 421-a Benefits

The amount of revenue foregone through the 421-a exemption exploded from the late 1990s through 2014, increasing twelve-fold from \$88 million in 1998 to \$1.07 billion in 2014, as shown in Figure 1. Two factors drove this growth. One was the boom in construction, which meant that more buildings were receiving the exemption. The number of units exempted grew from 32,000 in 2001 to 163,000 in 2014, as shown in Figure 2.

The other factor in the growth of the total revenue foregone was an increase in property values, which increased the value of each exemption. The average annual per-unit value of an exemption grew citywide from \$3,430

in 2001 to \$6,595 in 2014. Not surprisingly, the values were highest in Manhattan, \$10,327 in 2014. Manhattan's share of units exempted has fluctuated around 40 percent since 2001, but its share of the total value of exemptions has been much higher, rising from 61 percent in 1998 to 78 percent in 2005 before falling back to 60 percent in 2014. Because of the changing nature of the housing market, exemption values rose fastest in Brooklyn, going from \$1,646 in 2001 to \$4,845 in 2014. As a result, Brooklyn's share of the total value of exemptions went from 11 percent in 1998 to 23 percent in 2014.

It is worth noting that the 12-fold increase in tax expenditures due to 421-a from 1998 to 2104 did not come about because of any intentional act by the city or state government. Instead it occurred because of changes in the housing market, while the law remained relatively constant. The city and state did revise the 421-a law in 2006 and 2007, with changes taking effect in 2008. These changes were intended to make the tax exemptions somewhat



Source for Figures 1–4: New York City Department of Finance, Annual Report on Tax Expenditures, 1998 - 2014.

harder to get—not to increase the expenditure. But the market-driven escalation of benefits that was already underway when these measures were passed continued after they took effect. The growth of the expenditure did slow somewhat beginning in 2012, but this shift was the result of market changes, not legislation.

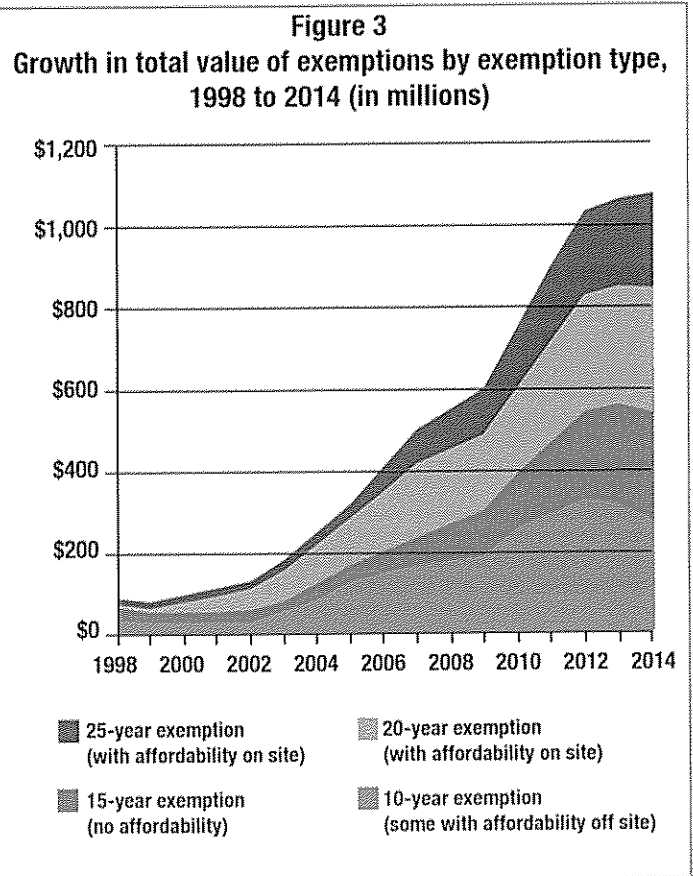
**It is worth noting that the 12-fold increase in tax expenditures due to 421-a from 1998 to 2104 did not come about because of any intentional act by the city or state government. Instead it occurred because of changes in the housing market, while the law remained relatively constant.**

Because each building receives the exemption for 10 to 25 years, the total amount of benefit each unit receives is much higher than the annual amount. Suppose that one building in that total is within Geographic Exclusion Area in Manhattan and received an exemption worth \$10,327 (the Manhattan average) in the fifth year of its 10-year period exemption. That would suggest it received \$17,212 in each of the first two years, declining to \$3,442 in the last two years for a total of \$103,270 over the full period—all in return for buying a certificate that probably cost \$40,000 or less. A building in Harlem that was permitted for construction before June 30, 2008, could receive the same \$103,270 worth of exemption without buying a certificate, because Harlem was outside the original exclusion area. Or consider a building built outside the exclusion area in Brooklyn that received a 15-year exemption that averaged \$4,845 per year over its period. This building would receive \$72,765 over the full period without any affordability benefit at all. These examples illustrate why the 421-a program is so inefficient. In one case only 40 percent of

the foregone revenue ends up helping to pay for affordable housing. In the other two cases, none does.

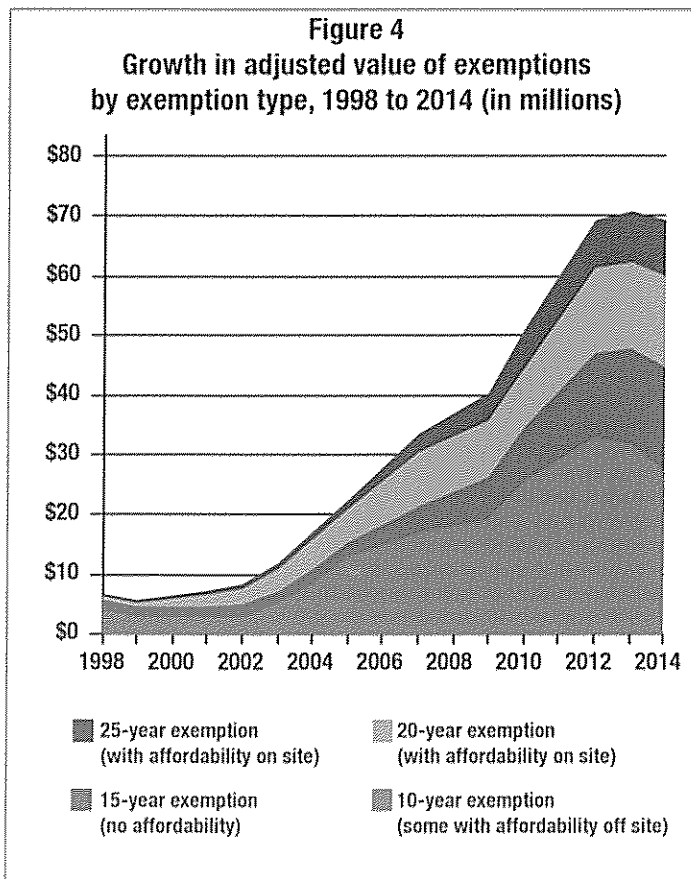
The evolution of 421-a can also be seen in the changing share of units receiving 10-year, 15-year, 20-year, and 25-year exemptions. This provides clues as to the amount of affordable housing being produced through the program. Fifteen-year exemptions provide no affordable housing. Ten-year exemptions sometimes, but not always, provide for off-site affordable housing. Twenty- and 25-year exemptions generally provide affordable housing, usually in conjunction with other subsidies.

It must be borne in mind that the varying lengths of the exemptions also skew their appearance in these statistics. The value of the 25-year exemptions observed in 2014 reflects exemptions granted over a 25-year period, while the value of 10-year exemptions in 2014 reflects exemptions granted in a period of only 10 years. Thus, Figure 3 shows



the actual values of the various types of exemptions, while Figure 4 shows values adjusted by dividing by the term of the exemption. This is an approximate average of the amount of annual expenditure added each year over the past 10 to 25 years, depending on the exemption type.

These graphs make clear the prevalence of 10-year exemptions in driving 421-a expenditures, but also that that prevalence began to fade after 2012. Somewhat harder to discern is the rapid growth of 15-year exemptions from 2006 to 2012, primarily due to development in Brooklyn. There were also increases in two categories with on-site affordable housing: 20-year exemptions (Manhattan below Harlem) starting in 2000 and 25-year exemptions (rest of the city) starting in 2002. The 10- and 15-year exemptions are the least efficient in producing affordable housing.



## Number of Affordable Units

Each year, New York foregoes \$1.07 billion through the 421-a program. How much does this effort contribute to affordability? The answer to that question depends primarily on three considerations: the number of new affordable apartments built, the income group to which each apartment is targeted, and the amount of additional subsidy each affordable apartment received in addition to the 421-a benefit.

The number of apartments created is clearly low, but is not known with certainty. The city does not directly track the number of affordable apartments created. Instead, it is necessary to estimate the number based on the number of exemptions granted in different locations. Two organizations have recently analyzed the affordability created through 421-a by mapping the location of exempt buildings and assuming that a share of the units in each building is affordable if it falls within the Geographic Exclusion Area boundaries that applied at the time the building was constructed. The Municipal Art Society<sup>7</sup> has produced an interactive map that estimates the number of affordable units in each building, but does not present any citywide total.

The Association for Neighborhood and Housing Development<sup>8</sup> has taken a similar approach in its analysis, but it assumed that each development took three years to construct and was therefore subject to the GEA in place three years prior to completion—a conservative assumption. On this basis, ANHD estimates that 12,748 of the 153,000 residential units receiving 421-a exemptions in 2013 were subject to affordability requirements. That is 8 percent of the total. Given that all 421-a buildings receive the exemption for at least ten years, this suggests that the program is creating affordable apartments at a rate of no more than a tenth of 12,748 per year—up to 1,275 at the astonishing cost of at least \$833,000 each.

It is also important to consider whether the 2008 reforms to 421-a have made it a significantly better program. The buildings receiving exemptions in 2014 were constructed

up to 25 years earlier, so the performance of the program largely reflects the unreformed law rather than the version now in force. To evaluate the current 421-a program, we must examine buildings developed since the reforms went into effect.

Our analysis shows that the 2008 reforms have had little effect on the 421-a program's ability to produce affordable housing, largely because most of the construction since 2008 within the expanded exclusion area was permitted by the city before June 30, 2008, and thus grandfathered in under the pre-reform rules.

In order to assess 421-a's current performance, CSS randomly selected a sample of 200 developments built from 2010 to 2013 and determined their actual affordability status, using city, media, and real estate industry sources. Our findings, summarized in Table 2, suggest that the

reforms have had only a small effect on affordable housing production. In 2010, 91 percent of buildings (weighted by number of apartments) that completed construction and received 421-a exemptions for the first time were not subject to any affordability requirement. In 2011 and 2012, that figure dropped, but only to 72 and 76 percent respectively. (Only three buildings with 21 apartments in our sample were built in 2013.) This shift probably reflects the delayed impact of the 2008 reforms, but even in the later years, two thirds of the apartments receiving 421-a exemptions for the first time in the expanded exclusion area were exempt from the new requirements because they were permitted prior to June 30, 2008.

In terms of apartments added to the affordable stock, the impact of this shift was minimal. In 2010, 41 affordable apartments were created on or off site—2 percent of the total. In 2011, that rose to 51 apartments or 6 percent of

**Table 2: Affordability requirements in a sample of recent 421-a developments  
(approximate number of affordable units in parentheses)**

	2010		2011		2012 and 2013	
	Buildings	Units	Buildings	Units	Buildings	Units
<b>OUTSIDE ANY GEOGRAPHIC EXCLUSION AREA</b>						
No affordability	60	1,116	33	223	36	413
<b>WITHIN OLD GEOGRAPHIC EXCLUSION AREA</b>						
Off-site affordability	0	0	2	30 (8)	0	0
<b>WITHIN NEW GEOGRAPHIC EXCLUSION AREA</b>						
No affordability	23	680	16	418	11	867
On-site affordability with additional subsidy	3	84 (17)	1	123 (25)	1	327 (66)
On-site affordability without additional subsidy	1	8 (2)	3	16 (4)	1	8 (2)
Off-site affordability	4	87 (22)	2	86 (22)	3	65 (17)

Source: CSS analysis of data on 421-a exemptions and the extent new and old Geographic Exclusion Area from the New York City Department of Finance, data on permits from the Department of Buildings, and news reports.

the total, and in 2012, 85 apartments or 5 percent. These numbers are based on a sample of 200 421-a exemptions out of 378 total from 2010 to 2013. Simple extrapolation suggests the true number of affordable units per year now stands at about 120. Even after the expansion of the exclusion area began to take effect, the affordable share of apartments receiving 421-a benefits for the first time is still lower than the 8.3 percent average for the 421-a stock overall as estimated by the Association for Neighborhood and Housing Development.<sup>9</sup>

### **Mixing and Matching Subsidies**

In evaluating the efficiency of 421-a, we must also consider other subsidies that may have been given to the developments receiving the tax exemption.

The 421-a tax exemption is commonly combined with other subsidies in order to create affordable housing. In many cases, this combination is justified, because a government agency has reviewed the overall finances of a new development and determined that the total subsidy package is justified. In other cases, however, the developer has been allowed to double-dip, for example, receiving both tax-exempt bond financing and 421-a with the same affordable units justifying both subsidies and without a review to determine whether a lower amount of subsidy would have been sufficient to create the affordable units. In either the justified or the unjustified case, however, it would be an analytic error to attribute the affordable apartments entirely to the 421-a program. If 421-a only did half the work to create an affordable apartment, it should receive only half the credit.

Our analysis of the recently added 421-a stock illustrates this point. From 2010 to 2012, 21 buildings with 834 apartments received the tax exemption with affordability requirements. Eleven of those buildings with 268 apartments involved the creation of apartments off site through the certificate program. It is not possible to trace whether the 53 affordable off-site apartments involved any further subsidies, although it is quite possible that they did.

The other 10 buildings, with 566 apartments, included on-site affordable apartments. Of these, five buildings with 32 apartments were built with the 421-a subsidy only. Thus the 421-a program deserves full credit for the 8 units of affordable housing created in those buildings. The other five buildings, with 534 apartments, were developed with extensive other subsidies. These buildings are subject to regulatory agreements related to their other subsidies and it is likely that these buildings have been reviewed to ensure that the total subsidy package is reasonably related to the affordability benefit. However, it is also likely that 421-a was not essential to getting these buildings built, as government agencies do have other tools for extending tax exemptions to affordable developments.

### **If 421-a only did half the work to create an affordable apartment, it should receive only half the credit.**

Because our sample contains only 10 recently developed 421-a buildings with on-site affordability requirements, we cannot confidently infer that this very high rate (94 percent) of additional subsidy use applies to 421-a developments as a whole. Nevertheless, the rate observed here is not inconsistent with the conventional wisdom that additional subsidy is used in most 421-a developments with on-site affordable housing.<sup>10</sup>

Our findings suggest that 421-a deserves perhaps only half the credit for 108 out of 173 affordable apartments developed with the exemption—which in turn indicates that the \$833,000 per unit estimate of the cost of creating affordable housing through 421-a was quite low. The true cost per unit is probably well over \$1 million.

## **Affordable To Whom?**

The income targeting of the affordable units created through 421-a is another important consideration in evaluating the efficiency of the program. In most cases, incomes for 421-a units are set in proportion to a statistic calculated by the federal Department of Housing and Urban Development known as “Area Median Income.” This figure is not actually a median but rather a construct based on a combination of city incomes, suburban incomes, and housing construction costs. In 2015, AMI for New York City is \$86,300. The target for 421-a is to households at 60 percent of AMI, or \$51,780, for a family of four. Adjusted to a more typically sized family of three, that is an income of \$46,600, implying a rent of \$1,165 for a two-bedroom apartment.

These are not the city’s poorest people, but a group just below the middle of the income distribution. This group does face significant housing stresses in New York City today, but the needs of poorer people are even greater. It also normally costs much less to make housing affordable to this group than to lower-income people.

The value of the 421-a affordable housing to the people who actually live in it can be measured by the difference between that rent and what they would have paid for an unsubsidized apartment of similar size, quality, and location. A rent of \$1,165 per month is below market for a good-quality two-bedroom anywhere in the city, but it is further below market in some places than others.

The on-site affordable units in our sample that were created with 421-a benefits only are located in Bushwick and Bedford-Stuyvesant, Brooklyn, and Bathgate and Crotona Park, the Bronx. The on-site units created with a combination of 421-a and other subsidies are located in Harlem and East Harlem, Manhattan, and Fort Greene, Brooklyn. The off-site units are probably located mostly in low-income areas of the Bronx and Brooklyn. This suggests that the apartments created are renting for \$500 to \$1,000 below market. The present values of these benefit streams to the tenants are thus \$70,000 to

\$140,000 per apartment—far less than the amount of taxes foregone to create them.

## **Is a Tax Incentive Still Needed for Market-Rate Development?**

The 421-a tax exemption is extremely inefficient if considered as an affordable housing program. Could it still be justified as a simple incentive for economic activity? Advocates for the real estate industry still occasionally argue that it is. Sometimes the argument is made directly, with the claim that tax incentives are needed to overcome the high cost of development in New York City. Other times it is made indirectly, with the claim that 421-a exemptions don’t actually cost the city money because the buildings receiving the exemption would not have been developed without the tax benefit, and the city would thus not have received taxes.

Ultimately, these arguments should only be truly persuasive to those who think that the revenues that can be generated from New York City real estate are too low to overcome the costs. Most apartments receiving 421-a are in Manhattan or in areas of Brooklyn and Queens that can command very high rents.

In these areas, land that is suitable for developing apartment buildings sells at prices that are high multiples of the number of indoor square feet permitted under zoning rules. Recently reported land sales in Manhattan below Harlem were mostly above \$400 per buildable square foot, sometimes rising above \$1,000. Sales in Harlem, East Harlem, brownstone Brooklyn, and Western Queens were mostly between \$100 and \$500 per buildable square foot. Sales for less than \$100 per buildable square foot were generally in the Bronx and more remote areas of Brooklyn such as East New York and Sheepshead Bay. All of these prices have risen dramatically in recent years.

When developers agree to pay these prices, they estimate that the net income from the buildings they develop will be enough to repay a loan covering both the price of the

land and the cost of constructing the buildings. The greater the expected net income, the greater the land price that developers will agree to pay. The rising prices paid for land reflect rising expected net incomes, which in turn reflect rising rents. The expected value of the 421-a tax exemption contributes to these prices, because developers will pay more for land that “comes with” the tax benefit. But when land trades for \$100 a foot or more, the 421-a contribution is a relatively small part of the picture. Without 421-a, it is reasonable to expect that these developments would go forward, although the land would have to sell for a somewhat lower price.

Some 421-a supporters have argued that the tax exemption is necessary to compensate for New York’s high land prices. This argument can be rejected where land prices are \$100 a foot or more, both because 421-a is part of the reason for the high price and because the high prices that developers pay for land prove that they expect high net incomes from their buildings. If 421-a were removed, land prices would adjust downward, but development would continue. In fact, a more sophisticated and plausible version of this argument says that ending 421-a would impose a disruptive, though temporary, transition while this adjustment takes place. But a perpetual subsidy of more than \$1 billion a year is hardly an appropriate response to this possibility.

At some point below \$100 per buildable square foot, however, the 421-a component of expected net income could become decisive in determining whether a development goes forward. Relatively few buildings receiving 421-a benefits are located in areas where such prices are the norm, and many of those that are developed in those areas also receive other subsidies. This makes sense, because it is difficult to turn a profit developing housing in some areas, even with 421-a. As a development subsidy, 421-a is only effective in a narrow band where expected rents are high enough that new development makes sense with the subsidy, but low enough that new development wouldn’t make sense without it.

In a Daily News opinion column in March, 2015,<sup>11</sup> developer David Kramer argued that one of his projects falls into that band. The building in question appears to be 1295 Nostrand Avenue, a market-rate development at the corner of Nostrand and Clarkson Avenue. Kramer says that without 421-a, his firm would have to pay \$1.3 million a year in property taxes. Since the firm will still have to

**Only a very small share of developments receiving 421-a fit into this narrow band of financeability, indicating that the program is just as inefficient as a development subsidy as it is as an affordability tool.**

pay taxes on the land, that is a tax benefit of roughly \$1.2 million for 11 years, followed by lesser benefits for four years. This suggests a present value of the benefit roughly equal to the \$10 million that the firm paid for the land (about \$70 per buildable square foot), indicating that the deal might well not have gone forward without the tax subsidy.

But this building is exceptional. If the expected rents would have allowed a land price \$30 higher per buildable square foot, the subsidy would probably not have been necessary. If they had been lower by the same amount, the subsidy would be insufficient to incentivize the project. Only a very small share of developments receiving 421-a fit into this narrow band of financeability, indicating that the program is just as inefficient as a development subsidy as it is as an affordability tool.

It is also debatable whether it makes sense to subsidize a development like 1295 Nostrand Avenue even in an efficient manner. The building is receiving subsidies worth \$10 million without providing any affordable housing. Its rents will be above \$2,000 a month, unaffordable to 75 percent of the current residents in its area. The neighborhood is far more likely to see it as a gentrification agent than a benefit worthy of subsidy.



## Fix It or End It?

The 421-a tax exemption is unacceptably inefficient regardless of whether it is considered as an affordability or a pro-growth policy. A wide variety of voices have declared that it cannot be allowed to continue in its current form. The question, then, is not so much whether 421-a is good policy as whether it can be made into good policy through legislative changes.

Key proposals to reform 421-a focus on eliminating the exemption for buildings without an affordable component and on increasing the affordability requirement where it does apply—by mandating either more affordable apartments or apartments targeted to lower-income people. These proposals would improve the efficiency of the program, both by increasing the affordable share of apartments receiving 421-a, and by decreasing the total number of 421-a apartments when more developers opt not to accept the exemptions.

What these proposals would not do is to provide any clear mechanism to relate the value of the exemption to the value of the affordable housing produced in order to get the exemption. Thus they would not cut off the flow of unnecessary subsidy to unaffordable housing.

When a building receives a property tax exemption, the value of that exemption is based on the amount of property tax that would otherwise be owed, which in turn depends on the assessed value of the property. Because real estate values vary very widely in New York City, the values of tax exemptions vary widely too. When government offers an exemption in return for providing affordable units, developers will accept the tax benefit whenever it is worth more than the cost of providing the units. In a few cases, the tax benefit will be only a little more than was necessary to incentivize the affordable housing production, but because the underlying values of the exemptions range so widely, there will inevitably be many more cases where the tax benefit is too high, resulting in an inefficient program overall.

Government could seek to overcome this problem by making 421-a more complicated. Instead of one Geographic Exclusion Area, there could be many concentric ones, with steadily increasing affordability requirements as you approach the city's core where the most valuable real estate lies. But this approach undermines the simplicity of the tax exemption program, which is often claimed to be its strength relative to more targeted subsidies. What's more, the system of concentric zones would have to be adjusted continuously, and accurately, in order to be effective.

The failure of the 2006 and 2007 amendments to significantly improve the 421-a program illustrates the difficulty of any geographic approach. The expanded Geographic Exclusion Area established in 2007 was never very well connected to real estate reality, and it immediately became out of date as the potential for high-end development expanded further into Brooklyn and Queens. Worse, the excessive grandfathering of developments allowed within the expanded exclusion area undermined its effectiveness almost completely.

Negotiating amendments to a fundamentally flawed program like 421-a is not the right way to create a truly effective and efficient affordable housing program. Instead, a new program should be developed that is built on the principle of exchanging subsidy for affordability benefits of similar value.

The huge amount of revenue foregone through 421-a could be better used for affordable housing in many ways. It could fund 100,000 rent vouchers similar to federal Section 8 to enable truly poor households to find housing in the private market. It could be used to provide capital subsidies to create place-based affordable housing similar to Mitchell-Lama. It could even be used for a better targeted tax subsidy, similar to the federal Low Income Housing Tax Credit, which does have an explicit mechanism to link cost to public benefit. Instead of tinkering with reforms to the structurally inefficient 421-a tax exemption, we should be debating which of these approaches is the best way to meet the city's vitally important affordable housing goals.

## NOTES

1. Edward C. Burks, "Tax-Abatement Plan Seeks to Stimulate City Housing," *The New York Times*, October 31, 1971.
2. Citizens Housing and Planning Council, "Reassessing Tax Incentives," *The Urban Prospect*, March/April 1997. See also Donald J. Trump and Tony Schwartz, *Trump: The Art of the Deal*, page 189 ff. Random House 1987.
3. Michael deCourcy Hinds, "421a: A Subsidy That Cost \$551 Million," *The New York Times*, March 19, 1987.
4. Vicki Been, New York City Commissioner of Housing Preservation and Development, testimony before the New York City Council Committee on Housing and Buildings, January 19, 2015.
5. These figures are calculated from a "Area Median Income" standard established each year by the federal Department of Housing and Urban Development
6. Market value estimates by the city Department of Finance are generally much lower than actual sale prices.
7. Municipal Art Society of New York, "421-a Tax Exemption," available at <http://www.mas.org/urbanplanning/421a/>
8. Association for Neighborhood and Housing Development, "421a Developer's Tax Break Expiring June 15, 2015: Fix It or End It," available at <http://www.anhd.org/wp-content/uploads/2011/07/ANHD-421a-Fix-it-or-end-it.pdf>
9. This analysis also allows us to assess ANHD's estimate of the affordability share. They estimated a three-year construction period for each building, so that within the new part of the Geographic Exclusion Area, an affordability requirement was assumed for 0 percent of units first occupied in 2010 or earlier but 100 percent of those first occupied in 2011 or later. Our analysis suggests that a more accurate estimation of those figures would be 9 percent in 2010 and 24 to 29 percent in 2011 and 2012. Because 9 is much closer to 0 than 29 is to 100, we conclude that over the whole period after 2008, ANHD's estimate of the affordable share is probably a bit high.
10. This is also in line with what the Real Affordability for All Campaign found in its analysis of recent 421-a exemptions in an area of downtown Brooklyn. Because most of the developments in this study received their exemptions under the pre-2008 rules, most did not include an affordable component. Of those that did, RAFA found that all but one received other subsidies in addition to 421-a. And that one remaining development, with six affordable apartments, received an inclusionary zoning incentive. Real Affordability for All Campaign, "Luxurious Loophole: How Developers Use Taxpayers to Subsidize Housing for the Rich," April 2014.
11. David Kramer, "Why Builders Need 421-a Badly," *New York Daily News*, March 16, 2015.

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# 421A DEVELOPERS' TAX BREAK

The laws governing NYC Rent Regulation and the 421a Developers' Tax Break will sunset on June 15, 2015 without any action from the State Government. Housing and tenant advocates have been working hard for months to ensure that we get a win for tenants and affordability for communities instead of more luxury residential development. Governor Cuomo must side with tenants and affordable housing.

Affordable housing and tenant advocates want to see stronger rent laws that protect NYC's residents first, before any passage of 421a legislation.

There are 1.05 million rent regulated units in the NYC as of 2014. We want the end of vacancy deregulation, and reforms of the Individual Apartment Improvements (IAIs) and Major Capital Improvement (MCIs) so these apartments remain affordable and tenants are not displaced.

The 421a Developers' Tax Break is well understood to be an inefficient giveaway for the real estate industry. We want to End 421a! If Albany and the City do not end 421a, then it must be reformed into an affordable housing program that meets the affordability needs of local communities, and our city as a whole.

Mayor de Blasio released his 421a reform proposal last week. While the Administration's plan includes improvements to the current 421a program, ANHD has identified three areas of key concern.

- 1) **DEPTH OF AFFORDABILITY:** The affordability levels in the Mayor's 421a plan fail to meet the needs of most of New York's communities. Many of the affordable units will be set at 130% of AMI. That is a \$112,190 income for a family of four and rents of over \$2,500 a month for a two-bedroom apartment. These rents will be at or above the market in many NYC neighborhoods. And 130% of AMI represents the top 25% of NYC households.

We have thousands of NYC families struggling with housing costs; over 1,000,000 renters earning under \$75,000 are rent burdened. Only 50,000 renters making over \$75,000 are rent burdened.

Affordable housing units must be priced to meet communities' affordability needs.

- 2) **PRICE TAG:** Over the next 10 years, the cost of the Mayor's 421a plan is projected to be largely the same. But starting in Year 12, the cost to the city increases dramatically. In core Manhattan, where we give the biggest 421a Tax breaks, the length of the full exemption would increase from 12 years to 25 years. This means that the price tag for each of these 421a buildings will nearly double.

We can not afford to jeopardize our City's fiscal security for developer tax breaks.

- 3) **LENGTH OF AFFORDABILITY:** While the length of the tax exemption would more than double in most cases, the length of affordability stays the same. Despite our current Housing Preservation crisis, the Administration's 421a proposal does not move us toward permanent or even longer-term affordability.

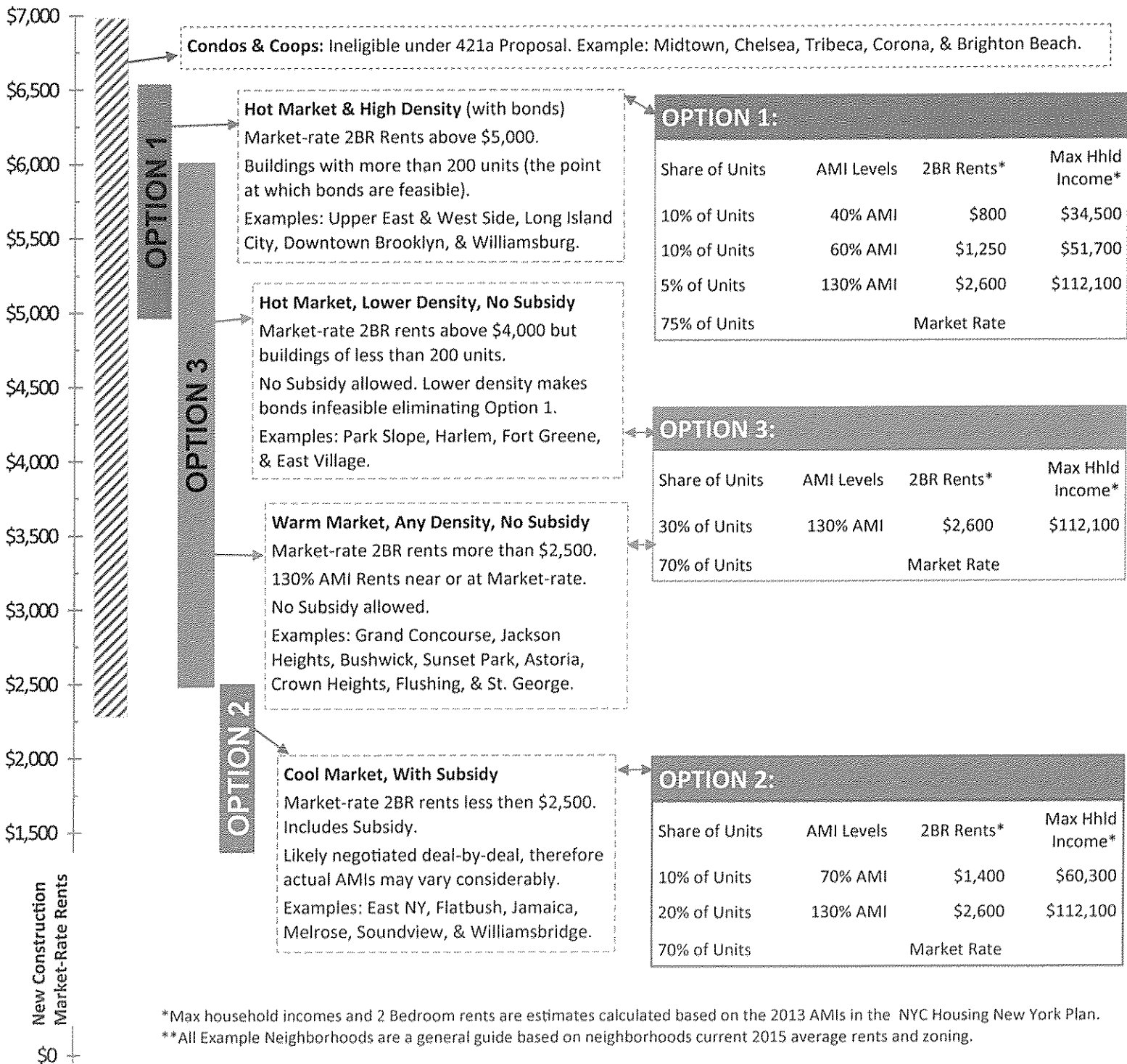
Any lengthening of the 421a exemption must come with Permanent Affordability.

Following is a summary of Mayor de Blasio's 421a plan, which illustrates what is likely to be built in different types of neighborhoods.

# 421A

# MAYOR DE BLASIO'S 421A REFORM PROPOSAL:

- Geographic Exclusion Area (GEA) is eliminated, requires affordability citywide.
- Multi-family 5+ Rental Housing only— condos and coops ineligible for 421a.
- Tax exemption period is extended to 35 years (25 year full, 10 year partial). Affordability stays at 35 years.
- Current 80/20s in service before 2008 can apply for new 421a benefits. In exchange for a 5% increase of affordable units and an extension of affordability period they receive a 50% tax exemption.
- Projected to generate 90,000 total housing units over 10 years, 25,500 of which are affordable.
- Developers choose any of the 3 options below to receive a 421a Real Estate Tax Abatement.
  - Buildings taking 421a plus subsidy (not including tax exempt bonds) must take Option 2.





**Testimony of Adrien A. Weibgen before the  
New York City Council Committee on Housing and Buildings  
Concerning the 421(a) Tax Abatement**

Thank you Council Members of the Committee for the opportunity to testify today. My name is Adrien Weibgen, and I am a Staff Attorney at the Community Development Project of the Urban Justice Center, or “CDP.” CDP’s mission is to strengthen the impact of grassroots organizations in New York City’s low-income and other excluded communities. We partner with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice. As part of its work around neighborhood change, CDP works with its partners to advance policies that promote responsible, equitable development throughout the city.

CDP believes that the 421(a) program in its current form is a terrible deal for this City – a giveaway that leaves millions of dollars in the hands of developers in exchange for far too little affordable housing. For that reason, CDP believes that the 421(a) program should be allowed to expire on June 15 – a move that would stand to put more than \$1 billion in tax revenue back in the City’s hands. However, if the program is to be extended, CDP urges the Committee to support comprehensive reforms of the 421(a) tax abatement program. In particular, we believe that 421(a) must be modified to create more and more affordable apartments; to require permanent affordability for the affordable apartments created under the program; to expand the affordable housing requirement to all areas of the City; and to prohibit “double-dipping” with 421(a) and other affordable housing programs, such as mandatory inclusionary zoning, to ensure an increase in the total number of affordable units created. Although the Mayor’s proposal addresses several of these goals, it fails to recognize the need to create apartments affordable to the New Yorkers in greatest need. We urge the Committee to go several steps further than the Mayor’s proposal, and in particular to demand that affordable units created under 421(a) be made available at 30% of the Area Median Income – not up to 130% of AMI, as the Mayor has proposed. Requiring deeper affordability is critical to ensuring that 421(a) spurs the creation of truly affordable housing for those who need it most.

The 421(a) program was first passed in the 1970s, when New York was in a housing crisis and policymakers were concerned that private market did not provide enough of a profit incentive for developers to build new housing. As New York’s housing market shifted, the program was reformed to require that developers seeking the tax abatement in certain areas create affordable housing in exchange. But the changes to 421(a) have not kept up with the times. Today, despite the City’s booming housing market, the 421(a) tax abatement remains available to many developers whose projects include no affordable housing whatsoever. Outside the Geographic Exclusion Area, which covers just 16.5% of the City’s neighborhoods, developers continue to receive colossal tax abatements for building new market-rate housing without any designated affordable units. New York City cannot afford to give away valuable tax dollars for nothing, and we join the Mayor in calling for reforms that would require affordable housing as a condition of receipt of the 421(a) tax abatement wherever projects are built.



We also share the Mayor's commitment to increasing the total number of units created under the 421(a) program. Under the current program, developers within the GEA must make 20% of all units affordable, with the remaining 80% at market rate. CDP believes that this ratio tips the balance too heavily in favor of developers' profits, not communities' needs. Developers should not be able to receive decades-long tax abatements for projects that create four market-rate units for every one affordable unit built. We believe that projects that receive 421(a) should be required to make at least a quarter of all units affordable, and we commend the Mayor's plan for increasing the required share of affordable units.

That said, we urge the City stay focused on the quality of affordable units, not only their quantity. The Mayor's plan creates several options for developers seeking 421(a), representing several mixes of apartments at different affordability levels. We support the idea of creating several options to address the different market realities within various neighborhoods to ensure that 421(a) is a useful tool for affordable housing creation wherever it is used – but none of the Mayor's options gets the affordability balance right. The lowest affordability level provided within any of the Mayor's options is 40% of AMI, and although City Hall has marketed its 421(a) proposal as expanding affordability to teachers, nurses, police officers, and others making as little as \$31,000 a year, the reality is that only a tiny fraction of units are likely to be built at this level. Instead, many developers will seek one of the administration's other two options – both of which define affordability at much higher income levels. Developers will be eligible to receive tax abatements for projects that are 70% market rate, and 30% affordable, with the “affordable” units targeted for households at 130% of AMI. These rents are “affordable” only to families with household incomes of \$100,000 or more, and simply put, these are not the families in greatest need of affordable housing. By raising the AMI threshold from the current 60% to the much higher 130%, the Mayor's proposals will, in many neighborhoods, represent a step backwards. Because many buildings receiving 421(a) will be built in neighborhoods with AMI levels significantly below 130% or even 70%, the “affordable” units in such buildings will not serve local residents at all. Instead, in many cases, the “affordable” units built with 421(a) will serve as footholds for gentrification by guaranteeing housing to people with incomes well above the neighborhood average. New York should not rush to accept such a bad deal.

Last year, 421(a) cost the City over a billion dollars in foregone tax revenue, and the Mayor's proposal is likely to cost even more. Although the administration's aim of creating and preserving 200,000 units of affordable housing over the next decade is an important goal and one that CDP fully supports, that goal should not be used to empty the word “affordable” of its meaning. CDP calls for the Committee to demand reforms to 421(a) that require developers to make at least at least a quarter of all units available at much lower income levels – 30% of AMI. In higher-rent markets where every additional market-rate unit represents a boon to developers, the City should demand even more in exchange for 421(a), and the tax abatement should be available only if a higher percentage of units are made available at 30% of AMI. Some developers may not take this deal, and may forego 421(a) rather than creating any affordable housing. The City can use their tax dollars to pay for the things New Yorkers desperately need, including truly affordable housing. Other developers may threaten not to build at all if 421(a)'s requirements are too stringent – let's call their bluff, because New York cannot afford to subsidize buildings that do not create affordable housing. In closing, I would like to thank the Committee for the opportunity to give testimony today.

## **MEMORANDUM IN SUPPORT**

### **421A AMENDMENTS PROPOSED BY THE ADMINISTRATION**

#### **CITY COUNCIL**

#### **HOUSING AND BUILDING COMMITTEE HEARING**

**JUNE 1, 2015**

#### **INTRODUCTION**

The Real Estate Board of New York (REBNY) is a trade association with 16,000 property owners, builders, real estate brokers and managers and other professionals active in New York.

We support the administration's 421a proposed amendments which would make affordable housing on-site and universal as a requirement of the program which would target our city's greatest housing need—rental housing, especially affordable housing. Further, the proposed amendments would increase the percentages required to 25 percent or 30 percent depending on the option chosen. The affordable housing required would also serve a greater percentage of low income households compared to the current program as well as place limits on the availability of substantial government assistance. The program would target these tax exemption benefits to rental housing where our city's need is greater. Lastly, the proposed amendments to the benefit schedule simplify the program, but, more importantly, recognize the adverse impact that the rising costs for construction, taxes and land have on housing production. These proposed amendments recognize the added financial burdens on housing, especially for affordable housing, and have attempted to neutralize these financial impacts in order to promote more new housing production and preservation of our existing affordable housing inventory.

The administration's proposal is practical, prudent and completes the evolution of this partial tax exemption program from an incentive to build housing to a program to create and preserve affordable housing.

#### **OVERVIEW**

The 421a program began in the 1970's to stimulate housing construction and bolster economic activity as the City began to face a severe economic crisis. As the City's economy and finances improved in the early 1980's along with the housing market, the 421a program was amended to take advantage of the strong demand for housing on the East Side and West Side of Manhattan by prohibiting 421a tax exemption benefits in these Geographic Exclusion Areas (GEA) unless affordable housing was built on site or the building owner purchased "negotiable certificates" which were generated by HPD-approved low income housing development anywhere the city. The recession in the early 1990s wreaked havoc on the city's economy, produced a virtual halt in low income housing production that would generate certificates and further suppressed housing production. In the 1990s we were building on average less



than 10,000 units a year, down from more than 30,000 units a year in the 1960s. Again, the program was modified to both stimulate new housing production and to require affordable housing on-site as a condition for these new benefits. These modifications introduced the 80/20 program which spurred nearly 30,000 units of new rental housing and almost 6,000 low income units on-site. As the housing market recovered from the impact of the recession and 9/11 in the early 2000s, the 421a program was amended again to expand the GEA mandating more areas where tax exemption benefits were available only if affordable housing was built on-site. This more restrictive 421a program remained in place during the Great Recession which had a dramatic impact on housing production. In 2009 and 2010, we average approximately 6,000 new units a year. This was roughly an 80 percent decline from the 30,000 units we were permitting between 2006-8.

Last year was the first year that permits issued for new housing units topped 20,000 since 2008. This is still more than 33 percent less than the peak of the housing production market in 2008. This level of housing production if sustainable over the next 20 years will only produce enough new units to meet the needs of our growing population and not alleviate the rental housing crisis we face. We think the administration's 421a proposal is an essential element to the increased production of rental housing and affordable housing that would address our city's housing needs.

#### **THE NEED FOR 421A TODAY**

Our economy and real estate market has recovered from the economic crisis of 2008-9 and some say that prices have returned to pre-crisis levels. However, over the last seven years, construction costs have risen dramatically, real property taxes are significantly higher than they were in 2008-9 (In FY2015 the real property tax levy is 57 percent higher than in FY2008.) and land costs have soared (more rapidly and more steadily and at a greater annual percentage from 2009 to 2014 in the GEA where current 421a benefits are not available without an affordability requirement. These facts are contrary to the claims of the critics of the 421a program). These factors have made it virtually impossible to build rental housing almost anywhere in the city.

REBNY analyzed a number of development scenarios to assess the financial feasibility of new rental housing development in three different geographic locations (Manhattan, Brooklyn and Queens) and under four different cost and affordability assumptions (Market Rate—no 421a, no affordability; a 20 percent affordable project with no 421a; a 20 percent affordable with 421a; and a 20 percent affordable with 421a and prevailing wages for construction). We used the same general financing assumptions, except for the scenario where construction cost reflected prevailing wages and the difference in market rents based on the geographic location.

There are three basic financial feasibility tests that builders and bankers use to assess a project's feasibility. One is a comparison to cost. Upon completion of construction and lease-up, the project should be generating enough net operating income for a knowledgeable buyer to be willing to pay more for the project, based on current market cap rates for the sale of comparable properties (generally 4.5% today), than it cost to build. Two is a yield on cost. Upon completion of construction and lease up, an equity investor (in our analysis we assumed equity was 30% of total project cost) in the project would be

looking for a yield on cost (net operating income divided by project cost) of 5.5%. The higher percentage here reflects the construction and lease-up risk an equity investor takes in comparison to buying an occupied building. Three is yield on debt (in our analysis we assumed debt was 70 percent of total project cost). Upon completion and construction, a lender would be looking at a yield on debt (net operating income divided by the amount of debt) of 7.5% in today's market. This higher percentage reflects the more conservative requirements of debt lenders as well as the fact that the lender would not benefit if the project upon completion generates more net operating income than projected.

Here is a summary of the results of our analysis of twelve development scenarios. Not one project which passed all three tests and none met the yield on cost or yield on debt. Under current market conditions, rental housing is not financial feasible. There were only two scenarios in which upon completion of construction and lease-up that their net operating income would yield a project market value (at a 4.5% cap rate) that was higher than the total project cost. One was the Manhattan 80/20 scenario using non-prevailing wage (merit shop) construction costs. In this scenario, the lower construction costs (\$250 psf for the trades), the high market rents (\$85 psf) and the 421a tax benefit almost make this project feasible. The other was a Queens project outside the GEA. In this scenario the lower construction costs (\$200 psf for trades), the 421a benefits without an affordable requirement and an all market rent (\$50 psf) project again make this project almost feasible. Though both projects fail the yield on cost and debt test, they are very close to the requirements of the financing market.

How, then, are projects getting financed and built? There are a number of circumstances which would permit the financing scenarios to change and make projects feasible. We have assumed land costs today of \$175 psf in Queens, \$200 psf in Brooklyn and \$300 psf in Manhattan. (We have been told that these assumptions may be low.) However, some builders may have purchased sites decades ago so their land cost is low. Not every builder has the financial capacity to acquire potential development sites and carry operating expenses for decades hoping the market for development will arrive. Another circumstance would be where a builder enters into a long-term ground lease for a site. This would reduce project costs. However, the ground lease payments are an additional operating expense and must be covered by a project's revenue. These opportunities are limited, but more and more in Manhattan this is one of the only ways to make rental housing financially feasible. A more limited approach is to increase the amount of equity in a project. This option is only practical for builders/equity investors who plan to hold the property for a long time and their investment analysis improves over the long term. For builders that must raise equity in the market place this is not an option. The cost of equity is generally higher than the 5.5% we have assumed and they are not investing for the long-term. Lastly, projects with an affordable component could qualify for Low Income Housing Tax Credits. Though this improves a project's revenue in the short-term, the financial benefits are temporary and from discussions with lenders and builders they do not alter the aforementioned feasibility tests.

## **SOME MYTHS ABOUT 421A**

### **1. DRIVES UP LAND PRICES**

It has been frequently stated by critics of the 421a tax exemption program that its elimination would drive down land prices and that its availability it drives up land prices. These statements are made without any data to support this claim.

REBNY analyzed the sales prices of residential development sites in New York City between 2009 and 2014 to determine if the 421a program had a significant impact on land sale prices that the critics of the 421a program maintain. The analysis of the data provided the following results:

- In the Geographic Exclusion Area affordable units are required to be built on site in order to receive 421a benefits. In these areas, the data showed that land prices did not decline, but instead increased dramatically and steadily over the six years we examined.
- Outside the Geographic Exclusion Area the 421a benefits are available as-of-right without an affordability requirement. In these areas, land prices did not rise, but instead, they declined for a few years, and then increased. From the analysis of the data, there is no substantial basis to claim that 421a increased land sale prices outside the GEA.

(Notes: The GEAs were greatly expanded in 2009, including all of Manhattan, large areas of Queens and Brooklyn and sections of the Bronx and Staten Island. Inside the GEA there are no 421a benefits unless affordable units are provided; outside the GEA 421a benefits are available as of right without an affordability requirement. To keep the distinction clear and simple we have labeled the land sales in the GEA that receive no benefits "inside the GEA"; those outside the GEA that receive as of right 421a benefits without affordability "outside the GEA".)

#### *HYPOTHESIS*

If the impact on land sale prices were as evident and significant as 421a critics claim, we would expect land sale prices inside the GEA to decline; and land sale prices outside the GEA to increase.

#### *ANALYSIS*

We examined a data set of 2601 development site sales from 2009 to 2014 on sites where zoning permitted as of right residential development. These sites included vacant land, gas stations, garages and underutilized property that were sold as development sites, according to our members who track sales of development sites.

We sorted these sales based on whether they were inside the GEA or outside the GEA.

Over this six-year period (2009-2014), there were 1520 residential development sites sold inside the GEA and 1081 residential development sites sold outside the GEA.

Our analysis examined trends in residential development site sales activity, the total dollar value and the median price of these sales, and the median price per buildable square foot of sales inside the GEA and outside the GEA.

#### *RESULTS OF THE ANALYSIS*

In 2009, the expanded GEA took effect requiring projects (with very limited exceptions) in these locations to provide affordable units on site as a condition for receiving tax exemption benefits.

Here is a summary of the residential development site sales in 2009 inside the GEA and outside the GEA.

- There were 39 residential development sites sold inside the GEA and 87 sold outside the GEA.
- The total dollar value of the residential development sites sold inside the GEA locations was \$317 million; outside the GEA the total value was \$148 million.
- The median price per buildable square foot inside the GEA was \$138; outside the GEA the median sale price a buildable square foot was \$65.

Beginning in 2010, the economy improved. The recession officially ended and activity in the real estate market was picking up in some locations. Here is a summary of the sale of residential development sites inside the GEA and outside the GEA after 2009.

- The number of sales of residential development sites inside the GEA increased every year, rising to 622 in 2014. In comparison, the number of sales outside the GEA declined in 2010 and 2011, increasing annually thereafter to 449 in 2014.
- The total dollar value of sales inside the GEA surged to \$10.3 billion in 2014; the dollar value of sales outside the GEA rose to \$1.6 billion.
- The median sales price per buildable square foot rose annually inside the GEA. In 2014 the median sale price per buildable square foot in the GEA was \$309, a 124 percent increase in six years.
- Outside the GEA the median sale price per buildable square foot declined in 2010 and 2011 and was unchanged in 2012. In 2013 and 2014 the median sale price per square foot increased. In 2014, the median sale price per buildable square foot outside the GEA was \$105, a 62 percent increase in six years.

Our analysis of residential development site sales activity, total dollar value of sales, and the median price per buildable square foot clearly show that the absence of as-of-right 421a benefits did not drive down sale price.

Outside the GEA, the decline in sales activity and dollar value of sales in 2010 along with the sustained decline in the median sales price per buildable square foot from 2009 through 2012 strongly suggest that 421a benefits have no evident impact on land sales price.

While sales activity picked up in 2013 and 2014 outside the GEA, it would be more reasonable to suggest that the market forces that drove up land prices inside the GEA also impacted pricing outside the GEA. There is no basis to attribute rising land prices in the last two years of this six year period to 421a benefits.

## 2. PROGRAM COST \$1 BILLION

The program's cost cited by 421a critics comes from the NYC DOF's Tax Expenditure Report. Regarding this number, the Report clearly states, "The estimate is not intended to represent the potential revenue gain for the city if the expenditure were eliminated." The 421a critics ignore this important qualification.

Eliminating this expenditure today would not eliminate the City's obligation to provide this benefit, so ending the program is not going to result in a recapture of this estimated cost as critics have contended.

Without 421a, some portion of the 168,000 units receiving the benefit and paying higher property taxes than before the development would not have been built and the potential "cost" would be less than the amount in the report.

These 168,000 units today are generating more than \$800 million in ACTUAL revenue and when fully phased in will pay more than \$2 billion in ACTUAL tax dollars.

The 421a program is instrumental in creating the housing boom in the city between 2000 and 2009 with more than 72% of the units permitted were outside Manhattan. This was the largest housing boom since the 1960s.

The NYC DOF Tax Expenditure Report also notes that the estimate is based on the ASSUMPTION that the City would have sufficient authority under the New York State Constitution's tax limit to levy the tax if the property tax exemptions were eliminated. The 421a critics ignore this important qualification as well.

This qualification is not insignificant. In 2006 the city had only \$32.6 million in taxing authority remaining; in 2007 it was \$122 million. In 2014, the unused margin (\$913 million) was less than the tax expenditure in the report, meaning they could not have collected all the foregone revenue reported.

Since 2005 the city began adding back into its operating limit abatements such as ICAP and the coop-condo abatement. These add backs have averaged more than \$900 million a year. Without the add backs in 2006, 2007 and 2014, the City would have exceeded its constitutional tax limit. It is unclear whether the city has the legal authority to add these abatements back to the operating limit.

### **MANSION TAX**

We support the changes to the Mansion Tax as a part of a broad based housing package with the City Mansion Tax revenue being devoted to housing.

### **CONCLUSION**

The 421a partial tax exemption program is essential for the creation of housing, especially affordable housing. The administration's amendments to the program recognize this fact and have redefined the program to be fundamentally an affordable housing program. These changes will be good for housing production in general and affordable housing production in particular. The additional revenue from the

Mansion Tax we think will increase the City's financial capability to meet and exceed its laudable housing goals. For these reason we support the administration's 421a amendments.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Rolando Guzman

Address: \_\_\_\_\_

I represent: St. Nick's Alliance

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: June 1, 2015

(PLEASE PRINT)

Name: Hally Chiu

Address: \_\_\_\_\_

I represent: Gale A. Brewer, Manhattan Borough President

Address: 1 Centre Street, 19th Floor NY NY 10007

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: KIRSTEN JOHN FOG

Address: ~~106 West 145th St~~ 529, 107th Ave

I represent: NATIONAL ACTION NETWORK

Address: 106 West 145th St

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 6/11/2015

(PLEASE PRINT)

Name: Assemblyman Walter T. Mosley

Address: 65 Hanson pl.

I represent: 57<sup>th</sup> Assembly District

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/11/15

(PLEASE PRINT)

Name: Dave Powell (FAC)

Address: 621 DeGraw street

I represent: Fifth Avenue Committee

Address: as above

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dave Powell

Address: \_\_\_\_\_

I represent: Fifth Ave. Committee

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ava Farkas

Address: \_\_\_\_\_

I represent: Met Council on Housing

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 42/a Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Paris Simmons

Address: \_\_\_\_\_

I represent: Local 79

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Ellen Davidson

Address: \_\_\_\_\_

I represent: The Legal Aid Society

Address: 199 WATER ST NY NY 10038

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 421a Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/9/15

(PLEASE PRINT)

Name: Maritza Silva-Farrell

Address: \_\_\_\_\_

I represent: Real Affordability for All

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Carrol Turner

Address: \_\_\_\_\_

I represent: NY-C Community Alliance for Worker Justice

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Thier Lopez

Address: \_\_\_\_\_

I represent: NYC Community Alliance for Worker Justice

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/2015

(PLEASE PRINT)

Name: Isaac Bowman

Address: 195 Cozine ave apt 4F

I represent: Mayor De Blasio's 42La amendment (32B)

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Santos Rodriguez

Address: NY

I represent: NYC Building Trades

Address: 71 West 23rd St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/18/15

(PLEASE PRINT)

Name: Dwight Chaparro

Address: Brooklyn NY

I represent: NYC Carpenters

Address: 395 Hudson

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: TONY WILLIAMS

Address: BROOKLYN, NY

I represent: NYC CARPENTERS

Address: 395 HUDSON

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/01/15

(PLEASE PRINT)

Name: LEANDRA REQUENA

Address: 88-36 ELMHURST AVE. Apt. 26

I represent: ELMHURST NY 11373  
MAKE THE ROAD NY (MARNY)

Address: 92-10 ROOSEVELT AVE. J.H. NY 11372

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 421a Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: ERICA GLEN-BYAM

Address: \_\_\_\_\_

I represent: LOCAL 79 - Laborers

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 421a Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/6/15

(PLEASE PRINT)

Name: Ana Taveras

Address: \_\_\_\_\_

I represent: Laborers Union

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 421a Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: JAMAL FOWLER

Address: FLUSHING QUEENS

I represent: 100 BCW, LOCAL 79

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Ellen Davidson

Address: 199 Water St

I represent: The Legal Aid Society

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms. ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/19.

Name: Bernadette Kelly (PLEASE PRINT)

Address: 265 W 14th Street, Suite 1201

I represent: Teamsters Joint Council: 16.

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: June 1, 2015

Name: Tom Waters (PLEASE PRINT)

Address: 90 Terrace View Ave Bx 10462

I represent: Community Service Society

Address: 145 E 22 St NYC 10010

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition  change

Date: \_\_\_\_\_

Name: Robert S Altman (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Queens & Bronx Building Assoc.

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

Name: Manny Matus (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: 32BJ

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

421A

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Moses Gates (PLEASE PRINT)

Address: 50 Broad

I represent: AMHD

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Anthony Thomas (PLEASE PRINT)

Address: 275 7th Ave, 18th fl NY, NY 10001

I represent: NYC Central Label Council

Address: 275 7th Ave, 18th fl NY, NY 10001

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition 421-a

Date: Monday June 01

(PLEASE PRINT)

Name: Bertha Lewis

Address: 39 Broadway

I represent: The Black Institute

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Vicki Been

Address: Commissioner, HPD

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Gary Rodney,

Address: President, New York City Housing

I represent: Development Corp.

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/1/15

(PLEASE PRINT)

Name: Alicia Celen

Address: Deputy Mayor for Housing : Economic

I represent: \_\_\_\_\_ Development

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms