



Legislation Text

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Int. No. 1757

By Council Members Kallos and Louis

A Local Law to amend the administrative code of the city of New York, in relation to modifications to the department of housing preservation and development housing portal

Be it enacted by the Council as follows:

Section 1. Sections 26-1801, 26-1802 and 26-1803 of the administrative code of the city of New York, as added by local law number 64 for the year 2018, are amended to read as follows:

§ 26-1801 Definitions. As used in this chapter:

Affordable unit. The term “affordable unit” means a dwelling unit for which occupancy [or initial occupancy] is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of (i) a loan, grant, tax exemption or conveyance of property from the department pursuant to the private housing finance law, other than article viii-b of such law, or the general municipal law, (ii) a tax exemption pursuant to section 420-c, 421-a or 489 of the real property tax law [or] (iii) generating a floor area bonus for the provision of affordable inclusionary housing or providing mandatory inclusionary housing pursuant to the New York city zoning resolution, provided that such dwelling unit is not subject to federal or state requirements the department determines would be inconsistent with the provisions of this chapter and not filled by direct referral by a governmental agency or instrumentality or (iv) where the rent of such unit is required to be restricted as a condition of a loan, grant, tax exemption or conveyance of property from the department, and provided further that such dwelling unit satisfies the additional conditions of [paragraph] paragraphs 1 and 2:

1. Before July 1, 2021, such unit satisfies the conditions of subparagraph (a) or, on or after such date,

such unit satisfies the conditions of subparagraph (a) or subparagraph (b):

(a) The issuance or renewal of such loan, grant or tax exemption, conveyance of such property or generation of such floor area bonus or effective date of such mandatory inclusionary housing requirement occurs or is executed or renewed, as determined by the department, on or after January 1, 2018, unless such unit is (i) in an existing building that contains ten or fewer units, (ii) subject to a preservation agreement, and (iii) the only residential property in which the owner of such building has an ownership interest, other than such owner's primary residence.

(b) For the purposes of a requirement imposed pursuant to this chapter, such unit is deemed to have satisfied the conditions of this paragraph unless such unit is subject to a regulatory agreement with the department, such agreement was executed before January 1, 2018 and has not been thereafter renewed and the department determines that (i) such agreement is inconsistent with such requirement, or (ii) such unit is in a building constructed prior to January 1, 2018 that contains ten or fewer units[,] and (iii) is the only residential property in which the owner of such building has an ownership interest other than such owner's primary residence; further provided that, where the department determines that one or more dwelling units are exempt from one or more requirements imposed pursuant to this chapter because of a regulatory agreement that satisfies the foregoing conditions, the department shall electronically submit each year to the mayor and the speaker of the council a report identifying the number of such units, disaggregated by the affordable housing program to which such agreements apply; and

2. On or after July 1, 2020, such unit is offered [by the owner] for lease or sale, or shares of a cooperative corporation that would entitle the shareholder to occupancy of such unit under a proprietary lease are offered [by the owner] for sale, provided that such unit (i) is not set to be filled by a waiting list, (ii) is not being offered to a current tenant, owner, or shareholder as a part of an internal transfer, or (iii) is not being offered to a current tenant, owner, or shareholder during conversion of a building or project from rental to ownership or from ownership to rental.

Department. The term “department” means the department of housing preservation and development.

Dwelling unit. The term “dwelling unit” means a dwelling unit as defined in the housing maintenance code.

Housing portal. The term “housing portal” means the website or successor technology created pursuant to section 26-1802.

Information, full unit. The term “full unit information” means, with respect to a dwelling unit, the following information:

1. Street address of the building containing such unit;
2. Apartment or unit number of such unit;
3. [Floor] Approximate floor area of such unit in square feet, unless such unit satisfies criteria the department establishes to determine whether collection or disclosure of such information would be impracticable;
4. Number of bedrooms in such unit;
5. Contact information for the owner of such unit or a person managing such unit on behalf of such owner;
6. A statement as to whether such unit is occupied;
7. [A statement as to whether such unit is an affordable unit and, if such unit is an affordable unit, (i) a] (i) A description of each affordable housing program for which such unit is serving as an affordable unit, (ii) the maximum lawful rent for such unit and (iii) the actual rent being charged for such unit, if any; and
8. Such other information as the department may specify by rule.

Information, limited unit. The term “limited unit information” means, with respect to a dwelling unit, [the]

1. The full unit information for such unit excluding the information described by paragraphs 2, 6, and 7 of the definition of full unit information; and

2. Any information described by paragraph 8 of such definition that the department specifies by rule.

Information, offered unit. The term “offered unit information” means, with respect to a dwelling unit that is being offered for rent or sale or shares of a cooperative corporation that would entitle the shareholder to occupancy of such unit under a proprietary lease that are being offered for sale, the following information:

1. If such unit is being offered for rent:

(a) The proposed monthly rent for such unit and, if a temporary reduction in such rent is being offered, including but not limited to a certain number of months in occupancy without rent, the net effective rent for such unit and the period that such net effective rent will apply; and

(b) The amount and a description of each fee, if any, that occupants of such unit will be required to pay in addition to monthly rent for such unit;

2. If such unit is being offered for sale or shares of a cooperative corporation that would entitle the shareholder to occupancy of such unit under a proprietary lease are being offered for sale:

(a) The proposed sale price of such unit or such shares; and

(b) The amount and description of estimated annual [property tax payments] costs owed for such unit, including property tax, maintenance fees, and any other annual costs owed for such unit; and

3. Whether the owner will be responsible for payment of utility services for such unit and for which utility services the owner is responsible;

4. Unless such unit satisfies criteria the department establishes to determine whether disclosure of the following information would be impracticable, provided that disclosure of such information shall not be deemed impracticable if such unit is (i) in a newly constructed project and (ii) being rented or sold, or shares of a cooperative corporation that would entitle the shareholder to occupancy of such unit under a proprietary lease are being offered for sale, for the first time after such unit becomes or is due to become an affordable unit, in a manner determined by the department: a floor plan for such unit, including approximate measurements for each room in such unit, or a floor plan of a dwelling unit that is located in the building that contains such unit and

that is substantially identical to such unit, together with a statement indicating that such floor plan is of a dwelling unit that is located within such building and that is substantially identical to such unit;

5. Unless such unit satisfies criteria the department establishes to determine whether disclosure of the following information would be impracticable, provided that disclosure of such information shall not be deemed impracticable if such unit is (i) in a newly constructed project and (ii) being rented or sold, or shares of a cooperative corporation that would entitle the shareholder to occupancy of such unit under a proprietary lease are being offered for sale, for the first time after such unit becomes or is due to become an affordable unit, in a manner determined by the department: photographs of each room in such unit or photographs of each room in a dwelling unit that is located in the building that contains such unit and that is substantially identical to such unit, together with a statement indicating that such photographs are of a dwelling unit that is located within such building and that is substantially identical to such unit;

6. The number of floors in the building where such unit is located and a statement as to whether such unit has elevator access;

7. A description of the pet policy for such unit;

8. A statement as to whether the following amenities or services will be available to the occupant of such unit and whether such occupant will be required to pay a fee for using such amenities or services:

(a) Air conditioning;

(b) A gymnasium or pool located in or on the premises of such building;

(c) A security guard, watch person or a person with similar responsibilities who is routinely in or on the premises of such building;

(d) A person responsible for accepting deliveries on behalf of such occupant who is routinely in or on the premises of such building; and

(e) An intercommunication device that such occupant can use to allow entry into such unit or such building;

9. A description of the process to apply for occupancy of such unit, including:

(a) Whether any deposits, application fees or other charges are required to be paid before an applicant will be considered for occupancy of such unit and a statement as to which, if any, of such deposits, fees or charges are refundable;

(b) A listing of the qualifications, if any, that an applicant must possess to be considered for occupancy of such unit; and

(c) At the time such information is submitted, a statement indicating the status of the application process applicable to such unit in a manner established by the department; and

10. The contact information of a person that may be contacted for additional information relating to such unit.

Listed unit. The term “listed unit” means a dwelling unit for which full unit information and, where applicable, offered unit information has been provided to the department.

Preservation agreement. The term “preservation agreement” means an agreement between the department and an owner of an existing building that was entered into in connection with a conveyance of property, loan, grant or tax exemption from the department in exchange for affordability for existing and future tenants in such existing building.

Regulatory agreement. The term “regulatory agreement” means a written agreement with or approved by any local, municipal, state, federal or other government agency that requires the provision of housing accommodations for families and persons of low or moderate income, and binds the owner of such real property and its successors and assigns. A regulatory agreement may include such other terms and conditions as the locality, municipality, state or federal government shall determine.

Waiting list. The term “waiting list” means a list of applicants, established at the completion of a lease-up or sale of a unit, or sale of shares of a cooperative corporation that would entitle the shareholder to occupancy of a unit, from which the owner or manager of such unit is required to process potential tenants,

owners, or shareholders as applicable for subsequent occupancies of such unit.

§ 26-1802 Housing portal. a. By no later than July 1, 2020, the department shall, with the cooperation of all other relevant agencies, create and thereafter maintain a website or successor technology that:

1. Allows an owner of an affordable unit, or a unit that is in a building, or a unit that is on an eligible site pursuant to section 421-a(16)(a)(xxix) of the real property tax law, or a person acting on behalf of such owner to use such website or successor technology to offer such unit for rent or sale or to offer shares of a cooperative corporation for sale that would entitle the shareholder to occupancy of such unit under a proprietary lease and accept applications for occupancy of such unit, if such person provides the department with full unit information and offered unit information for such unit in a time and manner established by department rule, provided further that the department shall, [by] no later than July 1, 2021, electronically submit to the mayor and the speaker of the council recommendations relating to allowing owners of dwelling units other than affordable units and units that are in a building, or units that are on an eligible site pursuant to section 421-a(16)(a)(xxix) of the real property tax law to use such website or successor technology to offer such units for rent or sale and accept applications for occupancy of such units, provided further that nothing in this chapter shall be construed to prohibit (i) offering such units on a building-wide or project-wide basis in a manner established by the department or (ii) offering occupied affordable units which subsequently become vacant in accordance with department requirements; and

2. Allows a user of such website or successor technology to:

(a) View limited unit information and offered unit information for listed units;

(b) View full unit information for a listed unit if such user verifies, in a manner established by department rule, that such user is a lawful leaseholder or owner of such unit, or is a lawful owner of shares of a cooperative corporation that entitle the shareholder to occupancy of such unit under a proprietary lease, provided that this functionality (i) shall only be required on and after January 1, 2021, but may be implemented earlier than such date, and (ii) may be implemented through a system other than the housing portal;

(c) View a selection of listed units based on search criteria entered by such user;

(d) Apply for occupancy of each available listed unit for which [the owner thereof is accepting applications for occupancy] offered unit information has been provided through such website or successor technology and for which such user appears to be eligible;

(e) Track the progress of applications submitted by such user through such website or successor technology, including such user's position on waiting lists for listed units;

(f) Automatically populate applications for occupancy of listed units with information provided by such user;

(g) Receive notifications by electronic mail and text message, or by successor technology, when a new listed unit is posted that matches criteria specified by such user or posted information changes for a listed unit specified by such user;

(h) Obtain limited unit information for listed units in a non-proprietary format that permits automated processing; and

(i) Indicate in such website or successor technology whether such user is interested in being considered for an affordable unit that subsequently becomes vacant, provided that consideration of users for such units may be carried out in a manner determined by the department, users shall only be considered for such units that satisfy their indicated preferences and such website or successor technology may require users at regular intervals to review and update their relevant profile information.

b. Commencing in 2020, the owner of a dwelling unit, excluding dwelling units owned and operated by the New York city housing authority, shall:

1. If the dwelling unit (i) is an affordable unit [or], (ii) satisfies the criteria to be deemed an affordable unit, except that such unit does not satisfy the additional conditions set forth in [paragraph] paragraphs 1 and 2 of the definition of affordable unit, or (iii) is in a building or is on an eligible site pursuant to section 421-a(16)(a)(xxix) of the real property tax law that contains at least one unit as described in subparagraphs (i) or (ii) of

this paragraph, annually provide the department with full unit information for such unit in a time and manner established by department rule; and

2. If the dwelling unit is an affordable unit and is available for rent or sale or if shares of a cooperative corporation are available for sale that would entitle the shareholder to occupancy of such unit under a proprietary lease, provide the department with offered unit information for such unit in a time and manner established by department rule.

c. Commencing July 1, 2020, any owner of a unit for rent or sale or shares of a cooperative corporation for sale that would entitle the shareholder to occupancy of such unit under a proprietary lease, who has provided the department with offered unit information for an affordable unit, whether for initial or subsequent occupancies, shall:

1. Offer such unit for rent or sale, or offer shares of a cooperative corporation for sale that would entitle the shareholder to occupancy of such unit under a proprietary lease, exclusively through the housing portal; and

2. Accept applications for occupancy of such unit exclusively through the housing portal.

3. Notwithstanding paragraphs 1 and 2 of this subdivision, after 30 days have elapsed since such owner has complied with paragraphs 1 and 2 of this subdivision, if such owner has offered such unit for rent or sale, or offered shares of a cooperative corporation for sale that would entitle the shareholder to occupancy of such unit under a proprietary lease, through the housing portal, and there are insufficient eligible applicants to fill such unit, such owner, shall (i) contact the department for written approval to commence marketing through means other than through the housing portal, and (ii) provide the department with a detailed list of all channels through which such owner will conduct marketing, including, if applicable, the names and contact information for individuals who will be conducting such marketing.

d. Commencing July 1, 2020, any owner of a unit in a building, or an owner of shares of a cooperative corporation that entitle the shareholder to occupancy of such unit under a proprietary lease, where such building contains (i) at least one affordable unit or (ii) a unit that is on an eligible site pursuant to section 421-a(16)(a)

(xxix) of the real property tax law, but where such unit otherwise does not fall under the definition of affordable unit, shall market and accept applications for initial or subsequent occupancies of such unit through the housing portal. Such owner of such unit may also market such unit or shares through means other than the housing portal. The owner shall (i) notify the department 30 days prior to the commencement of such outside marketing and (ii) provide the department with a detailed list of all channels used for such marketing.

e. The department shall make all reasonable efforts to notify all owners of affordable units and other units required to be marketed through the housing portal of their obligations under this chapter.

f. An owner of a dwelling unit that satisfies the criteria to be deemed an affordable unit except that such unit does not satisfy the additional conditions set forth in paragraphs 1 and 2 of the definition of affordable unit may make such unit that becomes vacant available through the housing portal, provided that such owner provides the department with offered unit information for such unit in a time and manner established by department rule and accepts applications for such unit through the housing portal in accordance with subdivision c of this section. Notwithstanding any provision of this chapter to the contrary, any such unit that is required to be made available through the housing portal in accordance with department requirements must do so in accordance with this chapter.

[d.] g. The department shall conduct outreach to owners of units described in subdivision [c] h. to encourage them to offer their occupied affordable units that subsequently become vacant via the housing portal.

[e.] i. When information entered by a user in the housing portal indicates that the user has an income below 80 percent of area median income for such user's household size, the department shall [notify] provide such user with a link to the website for the New York city housing authority.

j. Where the owner of any affordable unit has not provided the department with full unit information pursuant to subdivision b of this section because the owner of such unit was not required to provide such information under such subdivision, the owner shall provide application details for the unit along with

information including a website, mailing address or phone number, where a user may apply for and obtain additional information about the unit; and may offer such unit for rent or sale through the housing portal.

[f.] k. 1. Nothing in this chapter shall be construed to require the provision to the department or the disclosure of information about any dwelling unit where the department determines that such disclosure could result in an unwarranted invasion of personal privacy of an occupant of or applicant for such unit.

2. The city does not warranty the completeness, accuracy, content or fitness for any particular purpose of any information made available on the housing portal, nor are any such warranties to be implied or inferred with respect to the information furnished therein.

3. The city is not liable for any deficiencies in the completeness, accuracy, content or fitness for any particular purpose or use of information provided by any third party and made available on the housing portal.

4. This chapter shall not be construed to create a private right of action to enforce its provisions. Failure to comply with this chapter shall not result in liability to an agency.

§ 26-1803 Violations. a. An owner who [fails to provide information with respect to a dwelling unit pursuant to] violates subdivision b or subdivision c of section 26-1802 shall be subject to a civil penalty for each month as follows until such violation is corrected, except that (i) for a violation that occurs within the first six months that such unit is subject to the requirements of such subdivision, the department may, in lieu of imposing such a penalty, provide the owner of such unit with a written warning and (ii) the department may by rule establish alternative civil penalties relating to any dwelling unit in a building that contains four or fewer dwelling units, any dwelling unit in a building that is owner-occupied and contains six or fewer dwelling units or any dwelling unit in a building that is owned by a housing development fund company, as such term is defined in article 11 of the private housing finance law, and contains ten or fewer dwelling units, provided that such alternative civil penalties do not exceed the civil penalties that could be imposed in accordance with paragraphs 1 through 4 of this subdivision and subdivision b of this section:

1. For the first six-month period, not more than \$100 per month;

2. For the second six-month period, not less than \$100 per month and not more than \$250 per month;
 3. For the third six-month period, not less than \$250 per month and not more than \$1,000 per month;
- and
4. For the fourth six-month period and for each month thereafter, not less than \$1,000 per month and not more than \$2,000 per month.

b. For a second or subsequent violation of this chapter involving the same dwelling unit, the department may impose and recover a civil penalty that is twice the amount specified in subdivision a, as applicable.

c. The department may recover civil penalties pursuant to this section in an action in a court of appropriate jurisdiction or in a proceeding before the office of administrative trials and hearings acting pursuant to section 1049-a of the New York city charter.

d. Upon receipt of a credible complaint alleging that an owner has violated any provision of this chapter with respect to an affordable unit, the department shall investigate and, upon verifying such allegation in a manner to be determined by department rules, such owner shall be subject to a civil penalty in accordance with this section. The department shall by rule establish criteria for determining whether such a complaint is credible.

§ 2. This local law takes effect immediately and is retroactive to and deemed to have been in effect as of January 19, 2018.

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