

421-A - AN UPDATE

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On November 10, 2016, the Real Estate Board of New York and the Building and Construction Trades Council of Greater New York announced an agreement on the Real Property Tax Law § 421-a tax exemption program, which grants cuts in property taxes to developers when they set aside space in luxury projects to be used for subsidized apartments for low, moderate, and middle-income families/individuals. The city program's authorization lapsed in January 2016 after the state legislature failed to extend the program.

Under the agreement, construction on eligible buildings would pay an average of \$60/hour in Manhattan (300 rental units or more south of 96th Street) and \$45/hour in Brooklyn and Queens (Community Boards 1 & 2 in these boroughs that are within a mile from the nearest waterfront bulkhead), with benefits included. In addition, the time period in which builders would receive tax benefits has increased; under the new deal, where at least 20% of a building's apartments are earmarks as affordable, the builders would receive a 100 percent tax abatement for 35 years. In return, the subsidized apartments would have to remain affordable for 40 years. If a development offers more than 50% of its units as affordable, it can opt out of the minimum wage and benefit requirements, while still taking advantage of 421-a.

To enforce compliance of the wage and benefits obligations of participating developers, the agreement requires that developers hire independent monitors to audit certified payrolls. The independent monitor would certify to the NYC Department of Housing Preservation and Development within 120 days of the receipt of the final Certificate of Occupancy that the required average wages and benefits based on all hours worked have been paid.

The agreement allows developers to enter into Project Labor Agreements; doing so would allow them to opt out of the 421-a wage agreement requirement in its entirety and still be eligible to fully participate in all other provisions of the 421-a program.

This agreement would be retroactive, allowing projects already underway to opt-in. The agreement would not require the use of union contractors, however construction unions can compete for the work. The agreement does not currently include a MWBE provision.

Upon the Assembly and Senate passing legislation based on the agreement, up to \$2 billion in locked statewide affordable housing funds can be released. If the agreement is not passed prior to the new year, it runs the risk of being subsumed into the 2017 budget negotiations. The Governor has urged the legislature to return for a special session to deal with 421-a as well as other lingering issues from the 2016 agenda. However, legislation based on this agreement has not yet been printed. While the rumor mill continues to swirl over the potential for the Senate and Assembly to return to Albany in December, a host of issues, including legislative pay increases, must be worked out between the two chambers and the Governor's office before the legislative leaders will reconvene their chambers for a special session.

As always, we are available if you have any questions or need more information about the proposed 421-a agreement.