

New York City Unveils Subsidy for Mixed Income Development

January 09, 2024

At the turn of the new year, New York City unveiled a city-funded adaptation of the 421a tax incentive (named after Section 421a of NY Real Property Tax and Proceedings Law), the lucrative state tax exemption that lapsed in 2022. Since the 1970s, developers for most major residential projects in New York City relied on 421a, which froze property taxes on new developments for up to 30 years. Building owners were required to only pay property taxes that were owed on the site as valued before construction. Developers considered it the only way rental housing could be profitably built in New York City. Certain state lawmakers saw 421a as a handout to developers to finance luxury residences, amplifying the City's housing shortage.

Using the lapse of 421a as an opportunity to create a refined, independent version of the incentive for rental projects, the City's new program – the Mixed Income Market Initiative (MIMI) – aims to increase affordable housing and make mixed-income developments more common. Before implementation, the Department of Housing Planning and Development (HPD) seeks input from developers to gauge if and where there is interest in development under MIMI. HPD released a Request for Expressions of Interest ("RFEI") on December 26th, 2023. Submissions are due on February 15, 2024. [mimi-rfei \(nyc.gov\)](https://www.nyc.gov/mimi-rfei)

Under MIMI, developers of rental housing could receive both an Article XI real estate tax exemption (which currently applies only to affordable projects sponsored by a Housing Development Fund Corporation (HDFC) and requires City Council approval) and a city subsidy in an amount that is presently unclear. Under Article XI of New York's Private Housing Finance Law, a development's tax burden can be fully or partially exempted for up to 40 years. With approval needed from both the City's Department of Housing Preservation and Development (HPD) and City Council to receive the full incentive, which projects get approved may become a political question as much as one of competing proposals.

MIMI is meant to operate as a standalone mechanism to increase housing for all income levels. Unlike 421a, the subsidy will be awarded on a case-by-case basis instead of as-of-right. With more oversight by HPD, developers will face pressure to come up with attractive proposals, as MIMI will give preference to "proposals with the deepest affordability levels that also efficiently use public resources." That preference echoes the City's financing strategy: combining the subsidy under MIMI and Article XI tax exemptions with private funding and higher revenue market rate units.

The affordability requirements will be much steeper than 421a. MIMI requires projects to include 70 percent affordable units and 30 percent market rate units. Out of all units, 15 percent must be set aside for formerly homeless households and at least 10 percent more for families earning 50 percent of the area median income – \$70,600 for a family of four in New York City. Additionally, all affordable units must be rent stabilized for a minimum of 30 years, or until the Article XI exemption ends. The requirement for market rate units is intended to ensure that MIMI is utilized in wealthier areas, where the revenue generated from market rate units will be high enough to subsidize this higher percentage of affordable units at deeper levels of affordability.

MIMI will certainly be dwarfed by the scale of 421a, which provided 1.8 billion dollars in tax breaks annually. And the program depends on strong rents from the market rate units intended to subsidize the affordable units. But the City is looking aggressively for creative solutions to the affordability crisis. Carter Ledyard will therefore be following this program carefully.

Carter Ledyard & Milburn LLP uses Client Advisories to inform clients and other interested parties of noteworthy issues, decisions and legislation which may affect them or their businesses. A Client Advisory does not constitute legal advice or an opinion. This document was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. © 2024 Carter Ledyard & Milburn LLP.

related professionals

Christopher Rizzo / Partner

D 212-238-8677

rizzo@clm.com