

HPD ADOPTS NEW RULES TO IMPLEMENT SECTION 485-X AFFORDABLE HOUSING TAX LAW



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In a significant development for New York City's affordable housing sector, effective January 1, 2025, the NYC Department of Housing Preservation and Development (HPD) began implementing the Adopted Rules (ANNY Rules) of Section 485-x Affordable Housing Tax Law — also referred to as Affordable Neighborhoods for New Yorkers Tax Incentive Program (ANNY).

BACKGROUND AND ELIGIBILITY

Established on April 20, 2024, through an amendment to the New York State Property Tax Law (RPTL), ANNY aims to catalyze affordable housing development across the five boroughs. Subsequently, on December 16, 2024, HPD adopted the ANNY Rules, which became effective on January 1, 2025. For stakeholders in New York City's real estate development community, understanding these rules is now crucial for navigating the affordable housing landscape.

The program's timing aligns with New York City's broader initiatives to address housing affordability challenges. To qualify for ANNY benefits, developments must meet specific criteria including:

- **Minimum Unit Requirement:** Projects must feature six or more dwelling units, ensuring the program targets meaningful contributions to the housing supply
- **Construction Timeline:** Development must have commenced after June 15, 2022, and before June 15, 2034, providing a 12-year window for project initiation
- **Completion Deadline:** All construction must be completed by June 15, 2038, establishing a clear endpoint for program participation


KEY COMPONENTS OF THE ANNY RULES

Provided below is a general summary of the ANNY Rules:

1. Application Process and Documentation

The new rules establish a comprehensive framework for applications, introducing several critical requirements:

- **Timing Requirements:** Applications can only be submitted after the rental project's completion date, ensuring all construction meets program standards.

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- **Financial Considerations:** A non-refundable filing fee is required, though HPD may waive this requirement for fully affordable projects receiving substantial government assistance.
 - **Compliance Documentation:** Projects must provide detailed affidavits demonstrating either achievement of participation goals or documented reasonable efforts to meet these goals.
 - **Professional Certification:** Applications must include specific certifications from licensed professionals regarding space calculations and compliance metrics.

2. Affordable Unit Distribution Requirements

The rules mandate thoughtful integration of affordable units throughout developments, with specific attention to:

- **Floor-by-Floor Integration:** A minimum of 30% market-rate units must be present on any floor containing affordable units, promoting economic diversity.
- **Project Size Considerations:** Special provisions exist for different project scales:
 - ◇ Modest Projects: Tailored requirements for smaller developments
 - ◇ Large Projects: Enhanced integration requirements
 - ◇ Very Large Projects: Comprehensive distribution guidelines
- **Access Requirements:** Strict prohibitions against segregation or limiting affordable housing tenants' access to building amenities and common areas.
- **Configuration Oversight:** HPD maintains authority to review and disapprove building configurations that may conflict with program goals.

3. Rent and Income Restrictions

The framework establishes perpetual restrictions for rental projects, including:

- **Initial Rent Structure:** Detailed procedures for setting initial rents, including consideration of area median income (AMI) levels.
- **Marketing Band Calculations:** Specific formulas for determining acceptable rent ranges during initial leasing.
- **Lease Terms:** Mandatory offering of one or two-year renewal leases to tenants, providing housing stability.
- **Space Calculations:** Required architect or engineer affidavits calculating floor area for non-residential space benefit limitations.

4. Hotel Operation Restrictions

To maintain the program's focus on permanent affordable housing, clear prohibitions exist against:

- **Operational Restrictions:** Strict prohibition on operating participating properties as hotels, motels, or tourist accommodations
- **Corporate Tenancy:** Specific restrictions preventing the renting of affordable units to corporations, partnerships, or other entities
- **Use Requirements:** Guidelines ensuring residential character and permanent occupancy

5. Enforcement Mechanisms

The rules outline robust enforcement provisions:

- **Penalty Calculations:** Specific methodologies for calculating penalties for violations
- **Compliance Monitoring:** Ongoing oversight requirements
- **Violation Categories:** Detailed breakdown of different types of violations and their corresponding consequences

Practical Implications

These new rules represent a significant shift in New York City's affordable housing policy landscape. For developers, property owners, and housing professionals, careful attention to these requirements is essential for both compliance and maximizing program benefits. The comprehensive nature of these rules suggests a strong commitment to long-term affordable housing preservation and integration.

Learn More

For more information on the 485-x Affordable Housing Tax Law and the ANNY Rules, please reach out to your regular BurgherGray contact or to **Samuel R. Marchese**, Partner and Chair of the Rent Regulation and Administrative Law Division at smarchese@burghergray.com or call (201) 783-9797.

This article is for informational purposes only and is not intended to serve as legal advice. No attorney-client relationship is created hereby. For any questions or concerns or to learn more about the ANNY Program and related rules, we advise you to retain an attorney of your choice to provide informed guidance. This article is based on the law and information reviewed at the time this article was published.

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