THE HIGH COST OF LOW AFFORDABILITY

the case to repeal 421-A

REPORT BY:
Maxwell Cabello, Sr. Land Use & Policy Analyst
CHURCHES UNITED FOR FAIR HOUSING
History & Background

421-a is a tax exemption program that dates back to 1971 when New York City was losing large numbers of white residents to the suburbs\(^1\), which undercut the City’s tax base and contributed to New York City’s 1970’s financial crisis. Essentially, the goal of the program has always been to encourage the development of multi-family buildings.

One of the persisting arguments in support of the program is the fact that it alleviates the disproportionate tax burden that is normally exacted on multi-family buildings. The other key argument in favor of the program comes from developers, who say multi-family development would not generate enough return without the property tax exemption that 421-a provides given land acquisition, building, and property tax costs.

However, this argument fails to consider the fact that property values are likely inflated due to the assumption that a new development would receive 421-a benefits\(^2\) and ultimately fails to address the real problem—New York City’s inequitable property tax structure.

While this program initially included no requirements for affordable units, it was reformed several times throughout the past 50 years to eventually include set aside requirements for affordable units in certain geographic areas\(^3\). The most current requirements are outlined on the next page of this report and require affordable units on all projects that receive the 421-a benefit.

For an overview on the history of 421-a, see the timeline below:

1971
The first iteration of 421-a is enacted, giving 10-year tax abatement (on top of a 3-year tax abatement during construction) to all multi-family developments without any affordable housing requirements\(^4\)

1985
For the first time, the 421-a program requires an affordability component, which could be done off-site, but only in developments in Manhattan between 14th and 96th Streets, which is referred to as the Geographic Exclusion Area (GEA)\(^5\)

2006
The program’s GEA is expanded to include outer-borough neighborhoods and developers are now required to build affordable units on site for projects within the GEAs\(^5\)

2016
421-a is extended with affordability requirements changed from 20% to 30% and allowing for longer benefit terms for large-scale projects in “enhanced affordability areas” in Manhattan, Brooklyn, and Queens\(^6\). However, affordability levels still are primarily at 130% of AMI, making those units unaffordable to most New Yorkers.

2022
421-a will sunset in June of 2022, unless it is either repealed or extended between now and then\(^7\)
The 421-a program today (“Affordable Housing New York”) has more requirements and incentives than in the past, including longer abatement periods for projects that pay union wages to construction workers. However, the program is as costly as ever, and generally speaking, not generating units that are actually affordable to low-income New Yorkers, unless the incentives are paired with other financing and/or incentives like VIH or MIH (“Voluntary Inclusionary Housing” or “Mandatory Inclusionary Housing”). The following sections describe the program’s various shortcomings.

**Cost**

The 421-a program costs New York City $1.6 billion in property tax revenue annually per the NYC comptroller. Given the enormous shortfall facing NYCHA and the lack of funding for other forms of low-income housing and services, the annual loss of over a billion dollars of revenue to New York City is significant.

Between 2005 and 2015, the New York City Independent Budget Office (NYC IBO) estimated that over $2.5 billion in 421-a benefits went to homeowners instead of encouraging additional housing development. In 2015, the NYC IBO estimated that the 66 affordable units financed by a 421-a project cost the city an estimated $905,000 per unit. Comparatively, utilizing a cash incentive or the 420-c program would cost less than $200,000 per unit in the same area. This would translate to 250-300 more affordable housing units or more deeply affordable units at the same level of public investment or subsidy.

**Lack of affordability**

While the cost and efficiency of 421-a is certainly an issue, the actual projects built are just as much of an issue. Of the available housing lotteries on NYC’s Housing Connect portal (in January of 2020) that were 421-a projects, 83% only had income-targeted units at 130% of AMI (Area Median Income). 130% of NYC’s AMI is nearly $125,000 for a family of three, which is roughly twice the median household income for Brooklyn and Queens households, over three times the median household income in the Bronx, and over twice the median household income citywide in New York City. It is worth reiterating that these income-targeted “affordable” units only account for 20-30% of all 421-a units. Nearly half of all current units covered by 421-a benefits are market-rate condos, though the 2016 changes excluded condos from being covered going forward.

There are currently three options for 421-a projects (plus options for longer abatement periods for these same three options for projects utilizing union labor in “Enhanced Affordability Areas”), which have different requirements for affordability levels.

Option C requires 30% of units are set aside as affordable units, but all of these units can be targeted at up to 130% of AMI. Options A and B require slightly deeper affordability levels (though some units can still go up to 130% of AMI), but also are eligible for public financing and tax credits. This means the 421-a benefit does not create actually affordable housing without further subsidy, which is a major weakness of the program.
"Enhanced Affordability Areas"

Areas with particularly strong housing markets are identified as "Enhanced Affordability Areas" in the newest version of the 421-a program. Similarly, previous programs had "Geographic Exclusion Areas," where requirements differed from areas outside of these geographies.

Within the Enhanced Affordability Areas, 421-a projects can receive a thirty-five year benefit (versus twenty-five year benefit available for options A, B, and C) if the development is 300 units or larger and meet construction wage requirements ($60/hour in Manhattan and $45/hour in Brooklyn and Queens). These areas have some of the hottest housing markets in New York City and this program incentivizes large projects that do not provide deeply affordable housing for existing residents.

Option G, for example, mirrors Option C, but gets a longer exemption period in exchange for meeting the wage requirements. This means a 300-unit development in Williamsburg or Long Island City is eligible for a 35-year property tax abatement in exchange for setting aside 90 units that are only affordable to families earning nearly $125,000 per year. Recent research suggests that these types of developments can actually drive rent increases in older, existing housing stock.12

A poor solution to a different problem

Outside of being incredibly lucrative to developers, a key reason 421-a retains support is that NYC has a broken property tax system that punishes multi-family buildings. The 421-a program is a band-aid on a bigger issue and swings too far in the other direction, padding profits for developers and providing tax relief to owners of luxury condos rather than generating more housing that is actually affordable to those who most need it.

Reforming property taxes is necessary and should be addressed immediately, but 421-a is not, nor has it ever been, the solution to that problem. In its attempts to address this issue, it has cost the city dearly both financially and by exacerbating displacement pressures in communities already acutely experiencing them.

From 2014 to 2016, over a third of newly constructed multi-family units received 421-a benefits. However, of the over 84,000 new units constructed under the Mayor’s Housing New York plan, less than twelve per cent were covered by 421-a. The Housing New York data refers to projects completed in the past 5 years (2016-2020), so the data is not apples to apples, but directionally it seems to indicate that even by the Mayor’s broad definition of affordable housing development, 421-a is not a significant driver of developing housing units.
Compliance issues

In addition to the income-targeted units that make up 20-30% of 421-a projects, the remaining market-rate units are also subject to rent stabilization laws. This means that landlords of properties utilizing the 421-a tax abatement cannot raise rent for their tenants above the allotted amount set by the New York City Rent Guidelines Board.

Despite being legally obligated to adhere to rent stabilization laws, many 421-a property owners have searched for loopholes or outright ignored the requirements. In fact, this past January the Housing Rights Initiative identified more than 1,500 landlords who receive the 421-a benefit but have skirted rent stabilization laws. They also filed lawsuits pertaining to three properties that received over $20 million in benefits despite lack of compliance to their rent stabilization obligations.

As explained throughout this report, 421-a provides enormous benefits to developers at a steep cost to local tax revenue. Given that the City and State have been unwilling or unable to enforce one of the few benefits this program actually provides, the costs clearly outweigh the benefits to the general public.
From 2014 to 2016, nearly half of all multi-family housing units constructed in Queens and Brooklyn received 421-a benefits. The map above shows where all current 421-a projects are concentrated and reveals that the construction 421-a is subsidizing is largely located in North Brooklyn neighborhoods (Williamsburg, Greenpoint, Bushwick, and Bedford-Stuyvesant) as well as Long Island City, Astoria, Corona, and Flushing in Queens, and Harlem in Manhattan.

Many of the neighborhoods in Brooklyn and Queens with the highest concentration of 421-a projects are part of the Enhanced Affordability Areas, which are eligible to receive 421-a benefits for up to 35 years.
421-a: an example

In terms of how 421-a plays out in New York City communities, housing organizations and community members have seen a common trend: 421-a buildings whose “affordable” units are oftentimes higher than local market-rate prices. Churches United for Fair Housing is based in North Brooklyn where 421-a buildings are particularly prevalent. Below are the locations and listed rents for both a recent 421-a building whose lottery is opening soon with income-targeted units and a market-rate unit located nearby.

Despite receiving the 421a tax abatement, the **2 bedroom unit in the 421a building is nearly 50% more expensive** than a 2 bedroom market-rate unit just a couple subway stops away.

As you can see, despite being literally down the street from each other, the market-rate unit is far more affordable than the supposedly "affordable" 421-a unit that is receiving a property tax abatement. **The fact that the developer of this prohibitively expensive unit is able to avoid paying property taxes while potentially setting a new high water mark for local rents, shows how flawed this program really is when it plays out in our communities.**
Conclusions

Simply put, 421-a is a giveaway to private real estate developers. At best, the program is overcompensating for systemic issues baked into New York City’s property tax system that have still gone unaddressed, and at worst, 421-a simply pads profits of private developers without delivering housing that is affordable to anyone besides New York City’s wealthiest residents.

**421-a is one of New York City’s most expensive housing programs**

421-a costs New York City $1.6 billion per year in revenue, which is nearly 50 per cent of NYCHA’s total operating budget. A program of this size should be generating safe, permanently, and deeply affordable housing units for those in most need. Unfortunately, 421-a is a program that primarily fuels market-rate development despite its enormous price tag.

**The program is utilized most in the strongest local housing markets.**

As the map on the previous page shows, 421-a has clustered in specific areas within New York City. This includes areas like Williamsburg, Greenpoint and Long Island City that are known for their incredibly hot housing markets and luxury waterfront condos and apartments. Other areas like Harlem, Bushwick, Bedford-Stuyvesant and Astoria also have concentrations of 421-a and housing markets that have been heavily targeted by private, market-rate development in recent years.

421-a is supposed to provide a mechanism to broadly encourage the development of multi-family dwellings, but as of now, this development is not occurring broadly outside of the most expensive local housing markets.

**Nearly all units generated are unaffordable**

While the program has 20-30% set asides for “affordable” units, the affordability levels of these units is largely targeted towards households earning over six figures. This is substantially above New York City’s citywide median household income of $58,000 and only applicable to the 20-30% of units set aside as affordable, meaning the majority of units are even more expensive and unaffordable.
Recommendations

1. **Fully repeal 421-a [S260 / A1931]**

   This 421-a program is costing New York City well over a billion dollars per year, generally does not create deeply affordable housing (and when it does, usually because it is combined with other incentives), and has only really generated housing in strong housing markets where rents continue to rise. Given the lack of community benefits that 421-a provides, **where are these billions of dollars ultimately going? The answer is simple: to private, for-profit developers as well as wealthy condo owners.** These are not groups that need to be subsidized by our tax dollars, particularly when tens of thousands of New Yorkers do not have permanent housing to call their own.

   The next step is clear: we need to **repeal 421-a**, recapture this revenue, and focus on developing housing programs and incentives that create permanently and deeply affordable housing for those most in need in New York City.

2. **Use new revenue to fund public and social housing**

   As buildings lose their 421-a benefits and future market-rate developments are no longer able to avoid paying their property taxes, the City will have a substantial new revenue stream. **This revenue increase could be north of $1.5 billion** eventually. Given that 421-a is intended to increase multi-family housing production in order to lower housing costs, this windfall **should be invested in the housing most desperately need in New York City: extremely low-income housing, including both public and social housing.**

3. **Reform the property tax code in New York City**

   What remains true regardless of what is done on 421-a is the fact that New York City’s property tax structure is inequitable and oftentimes punishes tenants. While this report does not dive into the specifics of exactly what needs to be done to fix the property tax system, it clearly is an issue that needs to be addressed.

   Unfortunately, 421-a is simply not the right solution to the issues baked into the property tax system. The State Senate and Assembly should research and propose systemic changes to this system without relying on programs like 421-a that swing the pendulum too far and allow for so many to avoid paying their share of taxes.
Endnotes

5. https://observer.com/2015/05/a-taxing-matter-looking-back-on-the-history-of-421-a/

Other data sources consulted

NYC OpenData
NYC HPD
NYC DCP Population FactFinder
NYC PLUTO 20v1
NYU Furman Center