NEW YORK CITY COMPTROLLER
BRAD LANDER

A Better Way to Tax Multifamily Housing Development

Evening the playing field to increase the City's housing supply, with a strong focus on affordability.

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One Part of a Broader Deal to Address the Housing Crisis

An ambitious deal is urgently needed in Albany in 2024 to address New York's affordable housing crisis. Such a deal should (at least):

- Facilitate the creation of new housing across income levels, with a strong emphasis on affordability.
  This will require a new approach to taxing multifamily housing development, to replace the 421a program. That is the subject of this proposal.
- Protect tenants from displacement with good cause eviction protections.
- Establish & fund the Housing Access Voucher Program to support homeless & low-income families to access permanent housing.

Goals for Multifamily Development Tax Reform

- Increase the supply of housing across income levels, with a strong focus on genuinely affordable housing.
- Protect the public fisc: provide the level of tax incentives needed to facilitate development, but not more than that.
- Better match tax benefits to committed affordability and projected costs (including labor standards).
- Ensure that affordable units created are affordable to people in those neighborhoods.
- Facilitate the development of shared-equity, cooperative homeownership housing that is not currently being produced.

Key Elements of Multifamily Development Tax Reform

For mixed-income, majority market rate projects:

- Establish tax parity between new rentals & condos to even the playing field & incentivize development (will reduce taxation on new rentals ~30%).
- Offer a tax exemption for projects, underwritten based on projected costs and affordability.
- Facilitate a targeted teardown program to allow Class B and C office buildings to be torn down & rebuilt as large residential buildings, with an affordable housing component.

For all-affordable housing projects:

- Streamline as-of-right tax exemption for 100% affordable housing developments.
- Create a new, as-of-right tax exemption + density bonus for all-affordable, shared-equity cooperative homeownership projects (21st century Mitchell-Lama).

Tax Parity Between New Condos and Rentals Will Even the Playing Field, Incentivize Development, and Reduce the Need for Subsidy

- NYC's current property tax system taxes condos at a much lower rate than rentals, creating an incentive to develop luxury condos, and a substantial barrier to new multifamily rental development.
- This tax inequity is a substantial part of what necessitated 421a. Establishing tax parity for newly-created condos & rentals would reduce the need for subsidy for new development.
- Reducing tax rates for new large rentals (11+ units) by ~30% to achieve parity with condos would enable some additional unsubsidized market rate development to take place in strong markets.

Achieving equitable taxation of new multifamily buildings

- Tax parity for new development would require the creation of a new tax class and class shares formula in Article 18, Sections 1801-1803-B of RPTL.
- Within the new class, assessment ratios, caps & abatements can be chosen flexibly to achieve parity in Effective Tax Rates (ETR) across new large rentals (11+ units), condos & coops – lowering the tax rate on new rentals and avoiding under-taxation of new coops & condos.
- A new class allows for the valuation of new coop & condo buildings based on comparable sales, while lowering their assessment ratio to avoid large jumps in annual tax payments.
- Assessment procedures for rental buildings would remain unchanged. (Valuation based on sales is not feasible due to sample size and greater risk of litigation.)

Achieving equitable taxation of new multifamily buildings

- The creation of a new tax class requires updating the class share formula to allocate the tax burden appropriately. Changes to assessment rules and abatements could affect, among others, Article 4, Section 467-A and Article 5, Section 581.
- Tax parity should be reviewed every five years within the new class.
- Additional legal and economic modeling will be required to ensure fair implementation.
- This measure *should* be a component of comprehensive tax reform, but in the absence of political will to accomplish comprehensive reform, it could be done as a standalone effort.

Targeted tax relief for mixed-income projects, underwritten based on cost and affordability.

- Tax parity will reduce the need for subsidy & allow some additional unsubsidized market-rate development, but it will not be sufficient for the development of mixed-income housing.
- State legislation should therefore authorize HPD to issue appropriate tax exemption (full of partial) for majority market-rate projects (e.g. MIH) based on underwriting, given projected costs and committed affordability.
- Underwriting would be based on MIH options, with opportunities for larger tax break based on enhanced affordability. This avoids the potential problem of “double-dipping,” and balances the need for project subsidies with the public fisc.
- Allows for labor standards to be factored into underwriting.

Authorize a targeted tear-down program to facilitate the conversion of office space.

- New “City of Yes” proposals will assist with adaptive reuse of troubled office buildings to residential. However, in some instances a more attractive tear-down option is necessary.
- State legislation should authorize a targeted program for Class B and C buildings in specific Midtown Manhattan areas including:
  - As-of-right density bonuses for residential development
  - Require an affordable component in new buildings (à la MIH)
  - Include access to project-specific tax relief

Ensure that affordable units created are affordable to people in those neighborhoods

- Outer-borough 421-a (options c + g) created 15,028 housing units between 2017 – 2020.
  - ~70% or 10,365 of the units were market rate
  - ~30% or 4,663 of the units were "affordable" for households at 130% of AMI ($173,420 for a family of four), which means they were un-affordable for 75% of New Yorkers, and generally un-affordable for an even higher percentage of the residents of the neighborhoods where they were created.
- These units comprise almost all the income-restricted units outside of Manhattan, where in many cases they are set at prices that are indistinguishable from market-rate development in the neighborhood.
- In some cases, those developments are now seeking additional subsidies or to convert to other options.
- Any new option that provides tax incentives in outer-borough/non-core neighborhoods must create affordable units that are genuinely affordable to people who live there.

Streamline as-of-right tax exemption for 100% affordable housing developments

- 100% affordable housing projects can currently receive tax exemptions under several programs (Article XI, 420c), but the process can be burdensome and prevent the development and preservation of affordable housing.
- State legislation could authorize a full tax exemption aligned with HPD 100% affordable programs such as ELLA (Extremely Low and Low-Income Affordability), SARA (Senior Affordability Rental Apartments), Supportive Housing Loan Program, Neighborhood Pillars, etc.
- Should not apply for conversions of existing, currently-regulated affordable housing where affordability protections might be reduced (i.e. Article II to XI conversions of Mitchell Lama developments should not be as-of-right).
- Where housing is permanently affordable, the tax exemption would be permanent. Where affordability restrictions expire, the benefit would expire with them.

Increase affordable homeownership production through 21st Century Mitchell-Lama Program

- The State should establish an as-of-right tax benefit + density bonus that would pave the way for a new citywide, permanently affordable, multifamily cooperative homeownership program.
- City capital could then be used to incentivize development of deeply and permanently affordable homeownership, with tiers at multiple income levels to provide access to homeownership for a range of households who cannot afford it today.
- New program focusing on working-class families would include labor standards for construction and building maintenance.
- With new tax break, density bonus, and $1 billion capital investment (over several years), New York City and State could create 5,000 units of truly & permanently affordable homeownership.