akerman

Practice Update

Termination of NYC Housing Preservation and Development's Privately Financed Affordable Senior Housing

February 25, 2021

By Steven P. Polivy and Joshua J. Rinesmith

At the end of 2020, The Department of Housing Preservation and Development (HPD) announced that they will be rescinding the Privately Financed Affordable Senior Housing (PFASH) Term Sheet originally issued on July 18, 2019, which facilitated the development of Affordable Independent Residences for Seniors (AIRS) located within a privately financed project. The AIRS program was created in March 2016 to encourage the development of affordable housing for seniors and permitted increases in zoning floor area under the NYC Zoning Resolution for the creation of such units.

HPD stated in the official announcement that this program is "not compatible with other agency priorities, including ensuring that Privately Financed Homes produced through MIH are open to all income-eligible New Yorkers."

HPD further announced that in order to vest under the PFASH Program before its sunset, the following must occur:

1. A developer must submit to HPD by no later than **March 30, 2021**, BOTH (a) a full set of building drawings and supporting documents, as outlined in the HPD BLDS New Construction Design

Related People

Steven P. Polivy

Joshua J. Rinesmith

Related Work

Affordable and Workforce Housing

Economic Development and Incentives

New York Land Use and Zoning

Real Estate

Related Offices

New York

Review Submission Checklist, that are developed to a level consistent with that of DOB Plan Review Submission, and (b) submission of an application for the construction of AIRS units; and

2. The Project's PFASH closing and execution of an affordable housing regulatory agreement must occur no later than **June 30, 2021**.

HPD's has advised that there will be NO EXTENSIONS for either deadline.

It should be noted that the rescission of the PFASH Term Sheet does not impact the development of projects utilizing the Senior Affordable Rental Apartments (SARA) Program, which provides financing in the form of low interest loans to support the construction and renovation of affordable housing for seniors.

Notwithstanding the City cutting back on the support for affordable housing provided under the PFASH, there are incentive programs available for residential development under the Affordable Housing New York Program ("421-a (16)") and the Inclusionary Housing Programs (IHP), which have not been impacted by the PFASH cutback.

The 421-a (16) program is an as-of-right, partial-exemption program requiring that at least 25 percent or 30 percent [1] of the residential units in a rental project be affordable housing units, and can result in real estate tax exemption benefits for rental projects for a period of up to 35 years post construction. In addition, there is an option that applies to homeownership projects for which eligible projects can receive benefits for a period of up to 20 years post construction. IHP requires a percentage of a project's floor area to be set-aside for low-income affordable housing tenants, resulting in a floor area bonus for eligible projects. A developer may utilize both programs concurrently for certain new construction projects.

Since the 421-a (16) program provides that full benefits are available only if no more than 12 percent of the square footage is non-qualifying as residential space, the 421-a (16) program is often coupled with the Industrial and Commercial Abatement Program for commercial space in excess of the 12 percent threshold permitted under 421-a (16) or with the Food Retail Expansion to Support Health (FRESH) program which can result in a floor area bonus for the project and may be eligible for additional real estate tax abatements through the New York City Industrial Development Agency.

For more information on zoning and tax incentive programs please feel free to contact Joshua Rinesmith.

---

[1] The percentage of affordable units is dependent on the affordability option chosen under the 421-a(16) program.
