

# Now & Next

## Affordable Housing Alert

May 9, 2024

### **New York State budget incentivizes conversions of non-residential space to affordable housing**

By Abigail Patterson

New York's FY2025 budget includes a new tax exemption for New York City conversions of commercial properties.



#### **What's the impact?**

- The Affordable Housing from Commercial Conversions (AHCC) program targets conversions of non-residential space to affordable housing by providing real property tax exemptions for projects located in New York City.
- Eligibility is conditioned upon affordability restrictions and prevailing wage requirements.
- Exemption duration and sizing varies depending on project location and timing of construction commencement.

The recently adopted New York State budget contains several [key measures related to housing production](#). One such measure is an amendment to the New York Real Property Tax Law (RPTL) to add a new Section 467-m (the Amendment) and an exemption available thereunder (the Exemption), intended to address the housing crisis and the changing commercial real estate

landscape as the city emerges from the COVID-19 pandemic. The AHCC program targets for conversion commercial properties, but excludes hotels.

Eligible projects 1) will operate all dwelling units as rental housing; 2) will create six or more dwelling units; 3) have a Commencement Date between December 31, 2022 and June 30, 2031; and 4) have a Completion Date before December 31, 2039.

The "Commencement Date" of a project is the date of issuance of an alterations permit required for the work to convert the building or units to residential use; and the "Completion Date" is the date of issuance of a temporary certificate of occupancy permitting such use.

Affordability requirements for projects benefiting from an Exemption are as follows:

- / At least 25% of the units must be affordable housing units.
- / At least 5% of the units must be affordable to households earning at or below 40% of area median income (AMI).
- / The weighted average of all affordable housing units must be less than 80% of AMI.
- / The affordable housing units must contain no more than three income bands.
- / No income band may exceed 100% of AMI.
- / The affordable units will be restricted in perpetuity.

The Amendment incentivizes the ability to bring residential units online in short order by tying the term of the Exemption to a project's Commencement Date.

## Tax exemptions for eligible affordable housing commercial conversion projects

### COMMENCEMENT DATE ON OR BEFORE JUNE 30, 2026

An eligible project with a Commencement Date on or before June 30, 2026, will receive a 35-year benefit, as follows:

Within the Manhattan prime development area (defined as south of 96th Street)	
Period	Percentage Exemption
Construction Period	100%
Years 1–30	90%

Year 31	80%
Year 32	70%
Year 33	60%
Year 34	50%
Year 35	40%

In all other areas of New York City	
Period	Percentage Exemption
Construction Period	100%
Years 1–30 of the Restriction Period	65%
Year 31	50%
Year 32	40%
Year 33	30%
Year 34	20%
Year 35	10%

**COMMENCEMENT DATE ON OR BEFORE JUNE 30, 2028**

An eligible project with a Commencement Date on or before June 30, 2028, will receive a 30-year benefit, as follows:

Within the Manhattan prime development area (defined as south of 96th Street)	
Period	Percentage Exemption
Construction Period	100%
Years 1–25	90%
Year 26	80%

Year 27	70%
Year 28	60%
Year 29	50%
Year 30	40%

In all other areas of New York City	
Period	Percentage Exemption
Construction Period	100%
Years 1–25	65%
Year 26	50%
Year 27	40%
Year 28	30%
Year 29	20%
Year 30	10%

**COMMENCEMENT DATE ON OR BEFORE JUNE 30, 2031**

An eligible project with a Commencement Date on or before June 30, 2031, will receive a 25-year benefit, as follows:

Within the Manhattan prime development area (defined as south of 96th Street)	
Period	Percentage Exemption
Construction Period	100%
Years 1–20	90%
Year 21	80%
Year 22	70%

Year 23	60%
Year 24	50%
Year 25	40%

In all other areas of New York City	
Period	Percentage Exemption
Construction Period	100%
Years 1–20 of the Restriction Period	65%
Year 21	50%
Year 22	40%
Year 23	30%
Year 24	20%
Year 25	10%

## Additional guidance for housing conversion projects

### FILING FEES

The Amendment authorizes the New York City Department of Housing Preservation and Development ([HPD](#)) to administer and promulgate rules with respect to the Exemption. Filing fees will be no less than \$3,000 per unit, except that HPD may impose a lesser fee for projects benefitting from substantial governmental assistance, and may require a portion of such fee in advance of the marketing kickoff.

### COMPLIANCE AND ENFORCEMENT

We anticipate HPD will establish rules and/or procedures for the application process, marketing, compliance, documentation of the Exemption and its requirements, certification of eligibility to the Department of Finance, and enforcement measures such as imposition of penalties for violations of the affordability restrictions or wage requirements, including but not limited to revocation of the Exemption, all in accordance with the Amendment.

## **PREVAILING WAGE REQUIREMENTS**

The project owner, or of any employer of building service employees, including property management companies or contractors, are obligated under the Amendment to pay [prevailing wage](#) to building service employees for the duration of the Exemption, with the exception of projects with fewer than 30 dwelling units or conversions carried out with substantial governmental assistance.

## **RENT STABILIZATION**

All affordable housing units will be subject to rent stabilization. Affordable housing units must share entrances and common areas with market rate units, must not be isolated to a specific floor or area of the building, and must have a unit mix proportional to the market rate units, or at least 50% of such units shall have two or more bedrooms and no more than 25% of the affordable housing units shall have less than one bedroom.

## **Owners interested in housing conversion projects should act now**

The Amendment is effective immediately, but HPD will issue guidance with respect to implementation. Nixon Peabody's [Affordable Housing team](#) is monitoring HPD's promulgation of rules in response to the new legislation.

Because the Commencement Date dictates the Exemption duration and conversions may involve complex reconfigurations, time is of the essence for interested owners with properties appropriate for conversions.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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