Appendix P

Excerpts from J-51 & 421-a regulations

J 51 Regulations

Section 2.6 Rent Regulatory Requirements

(1) Rent Regulation Generally Mandatory. In order to be eligible to receive tax benefits under the Act and for at least so long as a building is receiving the benefits of the Act, except for dwelling units which are exempt from such requirement pursuant to paragraph (2) below, all dwelling units in buildings or structures converted, altered or improved shall be subject to rent regulation pursuant to:

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(i) the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code); or
(ii) the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code); or
(iii) the Private Housing Finance Law; or
(iv) any federal law providing for rent supervision or regulation by HUD or any other federal agency; or
(v) the Emergency Tenant Protection Act of 1974.

(2) (i) Exemption from Rent Regulation. Notwithstanding paragraph (1) above, dwelling units in multiple dwellings which are owned as cooperatives or condominiums and which are not regulated pursuant to any of such laws shall not be required to be subject to rent regulation.

(ii) Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office shall not be required to registered with DHCR, unless a plan of cooperative or condominium ownership has not been declared effective within fifteen (15) months of the date of the acceptance for filing of the plan of cooperative or condominium ownership with the Attorney General.

(3) Deregulation of units.

(i) With respect to a dwelling unit in any building receiving benefits under the Act,

(A) such unit shall remain subject to rent regulation until the occurrence of the first vacancy after tax benefits are no longer being

received for the building at which time the unit shall be deregulated, unless the unit is otherwise subject to rent regulation; or

(B) if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefits has included a notice in at least twelve-point type informing such tenant that the unit shall become subject to deregulation upon the expiration of the tax benefits and stating the approximate date on which tax benefits are to expire, such dwelling unit shall be deregulated after tax benefits are no longer being received for the building, unless the unit is otherwise subject to rent regulation.

(ii) As provided in §39-03, rent regulation shall not be terminated by the waiver or revocation of tax benefits.

(iii) Rent regulation of dwelling units shall not be exempted or terminated other than as set forth in this subdivision (f) as long as benefits are in force.

(4) *Permanent residential use*. All dwelling units must be leased for permanent residential purposes for a term of not less than one year so long as tax benefits are in effect. Permanent residential use shall not include use as a hotel, dormitory, employee residence or facility, fraternity or sorority house, resort housing or any similar type of non-permanent housing. For purposes of this chapter, a "hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, (i) a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter, and (ii) benefits may be pro-rated by deducting out work attributable to Class B units in a building containing both Class A and Class B units, provided that all units in a building are registered with DHCR as rent stabilized or rent controlled units, and are utilized for permanent residential use.

(5) *Escalation clauses in leases.* Except for the notice referred to in subparagraph (i)(B) above, no lease for dwelling units which are registered with DHCR shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease, other than permitting an increase in rent pursuant to an order of DHCR or the Rent Guidelines Board.

(6) *Partial waiver of rent adjustments attributable to major capital improvements.*

(i) As a requirement for claiming or receiving any tax abatement attributable to a major capital improvement, the owner of the property shall file with the Office, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be

received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by DHCR pursuant to the rent stabilization code equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. For example, an owner receiving a total rent adjustment over eighty-four months equal to $100,000 for a major capital improvement along with tax abatement of $100,000 for the same improvement would waive collection of $50,000 during such period. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. The entire amount shall be applied against the first annual rent adjustment, including any retroactive rent adjustments which maybe granted by the applicable DHCR order, unless the amount exceeds such adjustments, in which event the excess shall be carried forward. The calculation of the amount attributable to the waiver shall be against the total rent adjustment for the eighty-four-month period prior to the application of any annual percentage limitation applied by DHCR to defer collection of the total rent adjustment. In calculating rental adjustments pursuant to Rent Guidelines Board orders, the amount of the waived rent shall not be included in the base rent. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by DHCR, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with DHCR. Such declaration shall be binding upon such owner and his or her successors and assigns.

(ii) The provisions of subparagraph (i) shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with substantial governmental assistance.

421-a Regulations

Section 2.7 Rent Regulatory Requirements

To be eligible for partial tax exemption the land upon which the eligible project is located must meet the following letting, rental and occupancy requirements:

(1) If a building which, on December 31, 1974, contained more than twenty-five occupied dwelling units administered under the City Rent and Rehabilitation Law, the Rent Stabilization Law of nineteen hundred sixty-nine, or the Emergency Tenant Protection Act of nineteen hundred seventy-four, is displaced, or any unit therein is displaced, the new multiple dwelling will be eligible for partial tax exemption only if a Certificate of Eviction was issued for at least one dwelling unit in the displaced building. If only one unit is displaced as the result of eligible construction, the Certificate of Eviction must pertain to that displaced unit. Notwithstanding the foregoing, the sale, transfer or utilization of air rights over residential buildings which were not demolished shall not be construed as a displacement within the purview of this subdivision (g).

(2) Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the Emergency Tenant Protection Act of 1974, the rents of a unit shall be fully subject to regulation under such local law or such Act, unless exempt under such local law or such act from regulation by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to the Act, or for the period any such applicable local law or such Act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such regulation to the same extent and in the same manner as if this subdivision (g) had never applied thereto, except that for dwelling units in buildings completed, as that term is defined herein, on or after January 1, 1974, such rents shall be deregulated if:

(i) with respect to dwelling units located in multiple dwellings completed after January 1, 1974 such unit becomes vacant after the expiration of the lease for the unit in effect when such benefit period or applicable law or Act expires, provided, however, such unit shall not be deregulated if the Commissioner of the New York State Division of Housing and Community Renewal or a court of competent jurisdiction finds the unit became vacant because the owner thereof or any person acting on his or her behalf engaged in any course of conduct, including but not limited to, interruption or discontinuance of essential services which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of such unit, and that upon such finding in addition to being subject to any other penalties or remedies permitted by law, the owner of such unit shall be barred from collecting rent for such unit in excess of that charged to the tenant, if the tenant so desires, in which case the rent of such tenant shall be established as if such tenant had not vacated such unit, or compliance with such other remedy, including, but not limited to, all remedies provided for by the emergency tenant protection act of nineteen seventy-four for rent overcharge or failure to comply with any order of the Commissioner of the New York State Division of Housing and Community Renewal, as shall be determined by said Commissioner to be appropriate; provided, however, that if a tenant fails to accept any such offer of restoration

of possession, such unit shall return to rent stabilization at the previously regulated rent.

ii) with respect to dwelling units located in multiple dwellings with became subject to the rent stabilization provisions of the Act on or after July 1, 1984, the lease for the unit expires after such tax benefit period expires, provided that each lease and renewal thereof for such unit for the tenant entitled to a lease at the time of such deregulation contained a notice in at least twelve (12) point type informing such tenant that the unit shall be subject to deregulation upon the expiration of such benefit period and stated the approximate date on which such benefit period was expected to expire. If each lease and renewal thereof has not contained such notice, a unit covered by such lease shall be subject to subdivision (i) above even though it became subject to the rent stabilization provisions of the Act on or after July 1, 1984. This subdivision (ii) shall not apply to any unit in any multiple dwelling which was subject to the rent stabilization provisions of the Act prior to July 1, 1984, notwithstanding any contrary provision in any lease or renewal thereof.

(3) Notwithstanding paragraph (2) above, dwelling units in multiple dwellings owned as cooperatives or condominiums which are exempt from such provisions of law shall not be required to be subject to the provisions of law set forth in that paragraph (2) during the time period specified therein. Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office, shall not be required to be registered with the New York State Division of Housing and Community Renewal, provided that an affidavit has been filed with the Office stating that the sponsor will register the building and all units as they become occupied, with the New York State Division of Housing and Community Renewal within fifteen months from the date of issuance of a Final Certificate of Eligibility if a cooperative or condominium plan has not been declared effective by that time.

(4) The offering by the owner to all tenants in rental dwelling units in the multiple dwelling, of an initial lease of at least two years; unless the dwelling unit's rent is regulated by local laws, such as §26-401 of the Administrative Code, which do not provide for the offering of leases for fixed terms. This requirement shall not preclude a shorter lease where requested by the tenant, or where a lease of at least two years is specifically prohibited by the terms of a Department of Housing and Urban Development regulatory agreement for an insured subsidized project, or where, through foreclosure, title to a building eligible for partial tax exemption pursuant to the Act is held subsequently by the Department of Housing and Urban Development.

(5) No lease for dwelling units subject to the Rent Stabilization Law or Emergency Tenant Protection Act which are registered with the New York State Division of Housing and Community Renewal shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease other than permitting an increase in rent pursuant to an order of the New York State Division of Housing and Community Renewal or the Rent Guidelines Board; or an increase of 2.2 percent pursuant to §6-04(b) of this chapter.

TITLE 4: DETERMINATION OF INITIAL RENT; RENT INCREASES

§6-04 Determination of Initial Rent; Rent Increases.

(a) *Determining the initial adjusted monthly rent and the comparative adjusted monthly rent for rental dwelling units.* No certification of eligibility shall be issued by the Department until the Department determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling. Except for affordable units, the initial adjusted monthly rent is determined in accordance with the provisions of paragraph (3) below.

(1) The total expenses of the multiple dwelling shall be determined by the Department in order to calculate the initial adjusted monthly rent. Total expenses shall mean the annual total of the following:

(i) An amount for the annual cost of operation and maintenance, as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(ii) An amount for vacancies, contingency reserves and management fees as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(iii) Projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy; plus,

(iv) Fourteen percent of the total project cost, as determined pursuant to §6-05(b)(1)(i) and the Annual Schedule of Reasonable Costs, which amount will include debt service; less,

(v) The estimated annual income to be derived from any Floor Area of Commercial, Community Facilities, and Accessory Use Space in the multiple dwelling.

(2) The adjusted monthly rent per room shall be determined by the Department by dividing the total expenses as determined pursuant to paragraph (1) above by twelve (12) and then dividing that amount by the Room Count as defined in subdivision (c) of §6-01 of this chapter; i.e.,

$$\frac{\text{Total Expenses}}{12} = \text{Total Monthly Expenses} \qquad \frac{\text{Total Monthly Expenses}}{\text{Room Count}} = \text{Adjusted Monthly Rent Per Room}$$

(3) The The initial adjusted monthly rent for each dwelling unit shall be determined by the Department by multiplying the adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent for any dwelling unit may be allowed by the Department provided that the total of the rentals charged in the multiple dwelling do not exceed the total expenses of such multiple dwelling, as determined pursuant to paragraph (1) above; i.e.,

$$\text{Adjusted Monthly Rent Per Room} \times \text{Room Count Per Dwelling Unit} = \text{Initial Adjusted Monthly Rent for Such Dwelling Unit}$$

(b) Rent increases.

The owner of a multiple dwelling receiving partial tax exemption may insert in each lease to be effective during the period of gradual diminution of tax exemption, as defined in §6-06(e) of this chapter, a provision for an annual rent increase over the initial adjusted monthly rental at a rate not to exceed 2.2 percent per annum on the anniversary date of the first lease for the unit provided, however, that no increase shall be permitted pursuant to this subdivision (b) unless specifically provided for in each affected lease, and provided further that no more than one such increase per unit may be charged or collected in each given year regardless of the number of lease renewals or new leases which may pertain to that unit. The initial 2.2 percent escalation and all subsequent escalations shall be based solely on the actual rental amount in effect (regardless of whether the legal regulated rent may be greater) at the commencement of the period during which the increase may be charged and shall not be compounded from year to year but rather shall remain constant based on said rent. In addition, the increase shall be independent of any other escalation authorized by the Rent Guidelines Board and shall not be considered or included when a Rent Guidelines Board increase is effected, making the latter increase effective upon the base rent, excluding the 2.2 percent escalation. The maximum increase permitted by this subdivision (b) is 19.8 percent over the actual rental amount in effect at the commencement of the period during which the increase may be charged. The maximum increase permitted by this subdivision (b) may be charged in each year following the expiration of the tax benefit period, but shall not exceed 19.8 percent, or that amount charged in the last year of the exemption period, and shall not become part of the base rent.

(c) Annual rent schedule.

Each year the owner shall make available to the Office a schedule of rents for each unit in the building.