

## Understanding the NYC “421-a” Property Tax Exemption Program How Can it Be Reformed to Create Affordable Housing?

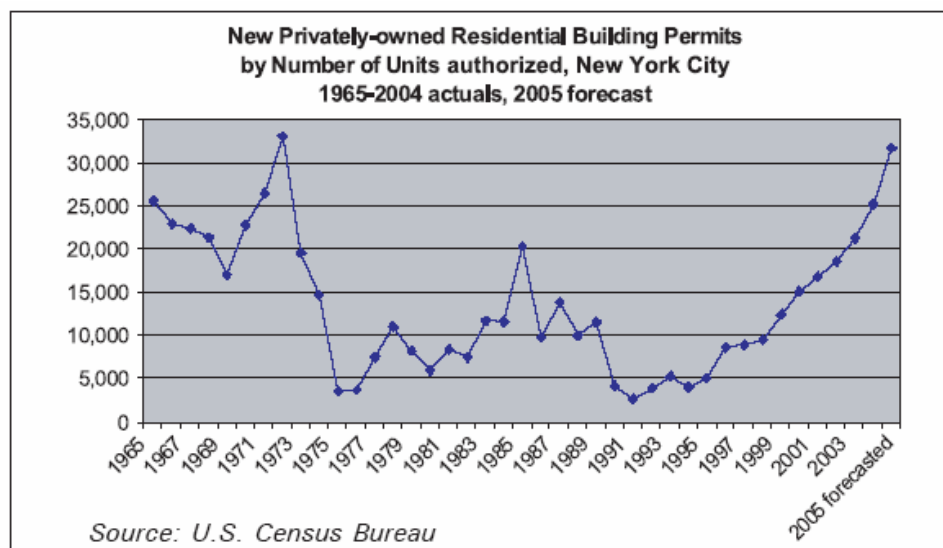
### Summary

Most newly-constructed housing development in New York City is currently eligible for a 10-15 year exemption from property taxes under the City’s “421-a” program ... even if no affordable housing is provided. A 2003 study by the Independent Budget Office found that from 1985 – 2002, only 7% (4,905) of the 69,000 units subsidized through this program were affordable to low or moderate income families. Yet the program is now costing New York City over \$300 million per year. In some cases, we are giving multi-million dollar tax breaks to exclusively luxury development in lower Manhattan and downtown Brooklyn, developed by some of NYC’s biggest developers.

Reform of the program is necessary and possible. We do not need to provide this subsidy simply to generate market-rate units. Already, only one-third of new construction utilizes the program, so it is clearly possible to develop without the subsidy. Other cities (e.g. Los Angeles and Seattle) do not provide such an exemption. And New York City has now applied affordability requirements in rezoned areas like the Greenpoint-Williamsburg waterfront. The time has come for full-scale, citywide reform of the program to require affordable housing in exchange for tax breaks.

### Background

The 421-a Property Tax Exemption Program was initially established in the 1970s, when New York City officials were concerned that residential construction was dropping as many residents moved to the suburbs (see chart below). The City decided give property tax breaks to any newly constructed housing development. In the 1980s, as housing rebounded a bit in Manhattan, the City designated an “exclusion zone” in Manhattan, roughly between 14<sup>th</sup> and 96<sup>th</sup> Streets. Developers building in this area are only eligible for a tax exemption if they construct affordable units either on-site (usually in an 80/20 development, with 20% low-income units) or off-site (by purchasing “certificates” that are used to create affordable housing elsewhere in the city).



## How the 421-a Program Works

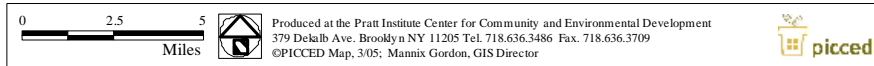
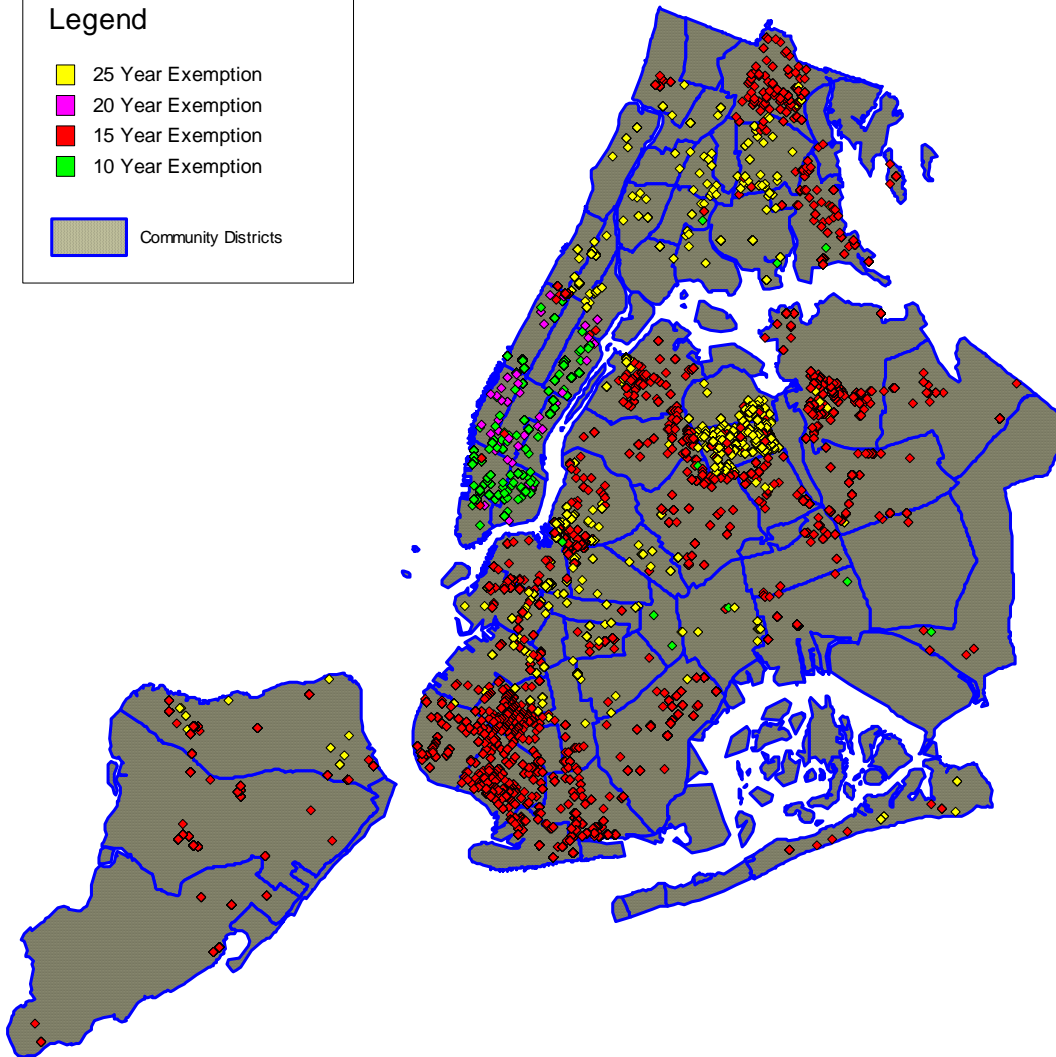
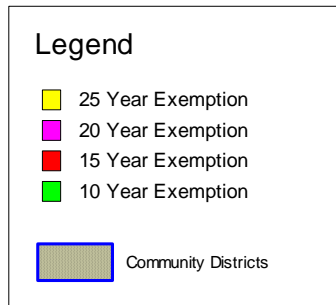
A 421-a exemption is available for new housing developments with three or more units, located on sites that were vacant, underutilized, or had a “nonconforming” zoning use. Under the program, owners are exempt from paying the increase in property taxes that results from the new construction. For example, if the vacant land was valued at \$1 million and the new property is worth \$10 million after construction, the property owner will not be taxed for the \$9 million increase in value for the exemption period.<sup>1</sup>

The program is available for condos, coops, or rentals. For condos and coops, there are no restrictions on sales price. For rental properties, the units must be registered under the rent-stabilization system. However, initial rents are set at market-value for the area. The program parameters are as follows:

<b>Manhattan, roughly 14 – 96<sup>th</sup> St</b>	<b>Rest of Manhattan below 110<sup>th</sup></b>	<b>Outer Boroughs/Above 110<sup>th</sup> St</b>
<p><b>10 year exemption: Off-site affordable certificates</b></p> <p>Developers purchase certificates from low-income housing developer creating affordable housing anywhere in the city. Certificates have generally sold for \$12,000 - \$15,000 each; each provides a 10-year exemption for a market-rate unit (as described in the adjacent box). Affordable developers receive 4 or 5 certificates for each affordable unit they build.</p>	<p><b>10 year exemption: As-of-right for market-rate</b></p> <p>Buildings are eligible for a 10-year exemption from property taxes, with no affordability requirement. Two years of full exemption, then two years of 80% tax exemption, then two years of 60% tax exemption...and so on.</p>	<p><b>15 year exemption: As-of-right for market-rate</b></p> <p>Buildings are eligible for a 15-year exemption from property taxes, with no affordability requirement. The first 11 years are fully-exempt, year 12 is 80% exempt, year 13 is 60% exempt ...and so on.</p> <p>(NOTE: Not available on Greenpoint-Williamsburg waterfront).</p>
<p><b>20 year exemption: 20% affordable on-site</b></p> <p>Developers who set aside 20% of their units, on-site, for low-income households (below 80% AMI) receive a 20-year exemption. Most of these are 80/20s, also subsidized with tax-exempt bonds and low-income housing tax credits. These projects are fully exempt for 12 years, then 2 years 80% exempt, 2 years 60% exempt, etc.</p>	<p><b>20 year exemption: 5% affordable for middle-inc</b></p> <p>Buildings are also eligible for a 20 year exemption if they receive substantial government assistance. This gives a 20 year exemption to building receiving Liberty Bond financing, even though they are only required to make 5% of the units affordable to middle-income families.</p>	<p><b>25 year exemption: 20% affordable or special area</b></p> <p>Buildings are eligible for a 25-year exemption (21 years of full exemption, then 1 at 80%, 1 at 60%), if they:</p> <ul style="list-style-type: none"> <li>◦ Set aside 20% of units for low-income households, or</li> <li>◦ Receive substantial government assistance, or</li> <li>◦ Are located in “Neighborhood Preservation Areas,” which are spotted throughout all boroughs (e.g. Corona, Jackson Heights)</li> </ul>

<sup>1</sup> Much of the information in this paper is drawn from the 2003 Fiscal Brief, “Worth the Cost? Evaluating the 421-a Property Tax Exemption” prepared by the NYC Independent Budget Office (<http://www.ibo.nyc.ny.us/iboreports/421aTaxFiscalBrief.pdf>)

# New York City 421a Units by Exemption Tenure



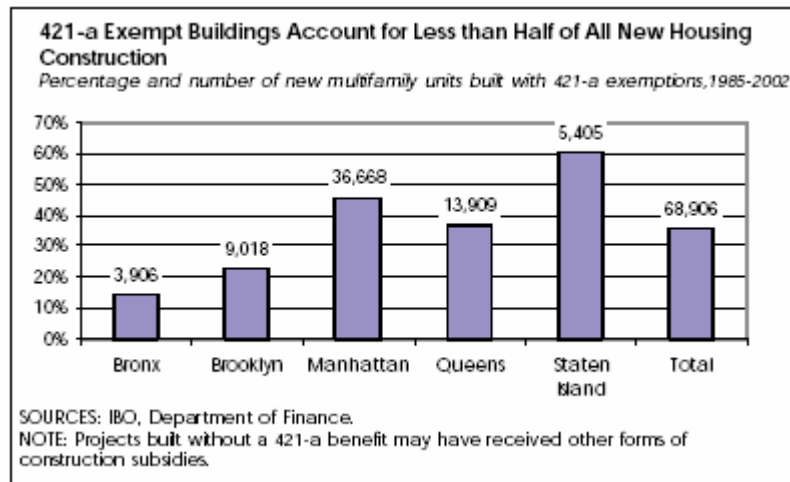
Source: New York City Independent Budget Office, FY 2004  
NYC Dept. of Finance Tax Assessor Role FY 2004  
NYC DCP Community Districts 2005

### How much does the program cost?

In FY2006, the program will cost the City \$300 million in lost tax revenue. This is up from \$130 million as recently as FY2002. The NYC Independent Budget Office calculated in 2003 that the average lifetime cost to the city of each unit ranged from \$19,400 for a 15-year exemption to \$91,455 for a 20-year exemption. This number has increased since 2002, as the taxable value of NYC property has increased significantly.

### Where and how often has the program been used?

Surprisingly, from 1985 – 2002, only 36% (69,000) of the 192,000 apartments built in New York City received a 421-a property tax exemption, for a variety of reasons. Much of the newly built, 100% affordable housing is provided with different property tax exemptions. Some buildings are ineligible (e.g. if they are on M-zoned land and built with a variance). Some developers choose not to use the program, in order to avoid the paperwork required. In any case, it is clear that a substantial amount of new residential construction has taken place in New York City over the past 20 years without this benefit. The breakdown of 421-a exemptions from 1988-2002 is as follows:



### Is this affordable housing program?

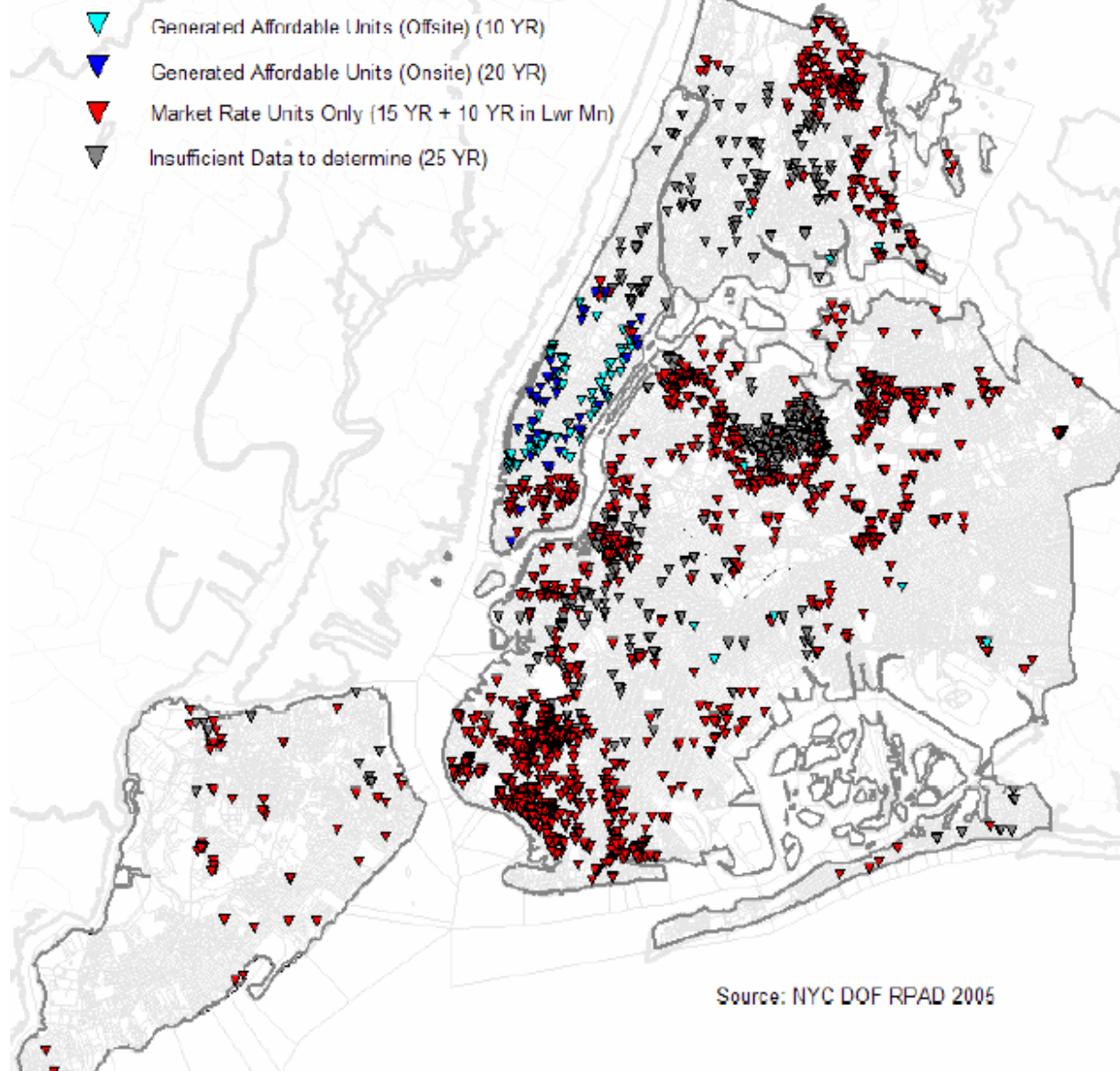
**No, not really.** According to the 2003 report by the NYC Independent Budget Office, only 7% (4,905) of the 69,000 units subsidized through this program were affordable to low or moderate income families. And it is likely that the percentage for recent years is even lower, as 421-a benefits have covered the boom of market-rate, luxury buildings in lower Manhattan (financed with Liberty Bonds), downtown Brooklyn, and Long Island City with little or no affordable units. Only in the "exclusion zone" -- roughly between 14<sup>th</sup> & 96<sup>th</sup> Street -- are any affordable units required (see the map on the following page). As part of the 2005 rezoning of Greenpoint-Williamsburg, the exclusion zone was extended to cover the Greenpoint-Williamsburg waterfront (with an on-site program only).

### Does the off-site "negotiable certificate" program really work?

Developers within the Manhattan "exclusion zone" can receive a 10-year exemption by purchasing "negotiable certificates" from developers building low-income housing elsewhere in the city (often in the Bronx). Generally, one affordable unit must be financed for every four or five market-rate units, and all rental units in the project receiving benefits become subject to rent stabilization for the duration on the benefits. Unfortunately, the certificates have generally sold for amounts (generally \$12,000 - \$15,000) far below the value of the property tax exemption provided to the market-rate developer over 10 years.

## NYC Property Tax Exemptions for New Construction

Buildings constructed since 1980 with active exemptions (421a) as of 2005



Pratt Center for Community Development, 2005

## Do we really need to provide a property tax exemption just to encourage market-rate housing?

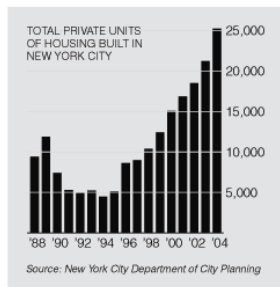
Developers often claim that New York City still needs to provide this tax break, just to get developers to build. They claim that they would choose not to build (in some or all areas) if they were not given a tax break for market-rate development. It is impossible to fully evaluate this claim, since one cannot prove a hypothetical of this type. However, much evidence suggests that it is not necessary to provide a property tax exemption simply to incentivize market-rate new construction in New York City:

- Over the past 20 years, 64% of new construction has taken place without 421-a. Clearly, it is possible for developers to build new housing throughout New York City without this subsidy.
- Other cities do not provide an as-of-right property tax exemption for new construction, and their housing markets have not suffered:

**Los Angeles** does not provide an as-of-right property tax exemption for new construction of housing. An as-of-right exemption is only available for 100% affordable housing development owned by not-for-profits.

**Seattle** requires that 20 – 30% of the units be affordable (20% below 60% AMI, 25% below 65% AMI, 30% below 70% AMI), and that affordable units and fixtures be substantially comparable to the market-rate ones.

In addition, some affordable housing advocates have questioned whether market-rate new construction in gentrifying neighborhoods is in fact a public good that we want to subsidize through tax breaks. And as construction expands in all five boroughs, at the same time that the City's affordability crisis worsens, we need to reconsider whether it is good policy to give away our tax dollars for market-rate housing.



### Booming Beyond Manhattan

There were five times as many units of housing built in 2004 than 10 years before, and much recent development has been outside Manhattan. Map shows private residential building permits issued between 2002 and 2005 by Census tract.

