The New York Housing Compact: Part II

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This article is part of a three-part series covering New York Governor Kathy Hochul's Housing Compact. Part I of the series can be found here.

Although the growth targets and transit-oriented development provisions of Governor Hochul's Housing Compact appeared to be "dead on arrival" when introduced in Albany in January 2023, one key aspect of Governor Hochul's plan—the use of tax incentives to spur property upgrades—appears to have gained traction among various constituencies throughout New York. Notably, recent initiatives have been designed to target improvements in both the residential and commercial property sectors. The programs described below reflect a continued willingness by officials to reform state and local tax laws in order to enhance aspects of the real estate market.

Commercial Developments. Responding to the post-COVID market conditions affecting non-trophy office buildings, the New York City Economic Development Corporation (NYCEDC) recently introduced the Manhattan Commercial Revitalization Program ("M-CORE"). M-CORE is designed to facilitate upgrades to Class B and Class C office buildings to align with the Class A, amenity-rich offerings desired by tenants as part of the recent "flight to quality" in Manhattan and also to provide high-tech, collaborative office spaces designed for incubating start-up companies and connecting them to venture capital. M-CORE is available to owners of commercial buildings that are (i) larger than 250,000 gross square feet, (ii) built before 2000 and (iii) located south of 59th Street in Manhattan.

M-CORE incentivizes owners of eligible buildings to make capital investments by offering up to 25 years' worth of real property tax abatement, a reduction in mortgage recording tax and reduced city and state sales taxes on construction equipment and materials. For the first 2.5 million square feet to qualify for M-CORE, the real property tax abatement is 100% for the first 17 years. Owners are required to inject over 75% of the assessed value of a building into capital improvements to become eligible for the abatement. With an application deadline of August 1st, 2023, building owners will need to move quickly in order to access M-CORE's benefits.

Residential Developments. The New York State Senate and Assembly passed the Affordable Housing Rehabilitation Program ("AHRP") in early June 2023 as a replacement to the expired J-51 tax benefit. The J-51 program, which offered a 34-year exemption from real property tax increases for multifamily owners that undertook significant capital improvement projects, had been proven to incentivize owners to rehabilitate units in order to achieve higher rents. To qualify for AHRP, an eligible owner must complete its rehabilitation work after June 29, 2022 and prior to June 30, 2026, with a maximum construction period of 30 months.

AHRP is available to rental buildings that are either (i) 50% affordable, (ii) receive "substantial" government funding or (iii) are part of New York's Mitchell-Lama program. For condos and co-ops, buildings must have an assessed valuation of less than $45,000 per unit (based on New York City valuation guidance for the applicable tax class) in order to qualify. AHRP offers eligible owners up to a 20-year real property tax abatement for 70% of the "reasonable" costs of certain renovation work (as determined by the City) capped at an 8.3% abatement per year. Following the first abatement, each unit will be subject to rent regulation for 15 years. Due to AHRP's affordability restrictions, it affects a narrower group of residential owners than did J-51 (which had declined in popularity before its expiration due to restrictive cost limitations and burdensome litigation) and will thereby likely generate less support among the real estate community.

While the eligibility requirements for AHRP somewhat limit its potential reach, popular support appears to be growing due to AHRP's targeted approach at increasing affordable housing supply in buildings that have historically offered such housing, thus counteracting some of the typical community resistance that is characteristic of newly-constructed affordable housing developments. In addition to the State Legislature, the New York City Council will still need to approve AHRP before it is implemented, but early indications are that approval is expected.

Next Steps. While it remains to be seen whether these initiatives will prove successful in New York, other states and cities are pursuing similar methods of increasing housing supply and promoting commercial development. Chicago has offered Tax Increment Financing (TIF) to developers pursuing downtown office-to-residential conversions as part of its "LaSalle Reimagined" program, and Seattle has proposed a $970 million tax levy covering all real property in order to fund affordable housing. Real estate owners and developers that are active in the New York City market will pay special attention to a potential successor to the popular 421-a tax abatement as well as potential additions to low-income housing tax credit (LIHTC) funding. In sum, despite the rejection of Governor Hochul's Housing Compact, municipalities appear poised to use tax programs to alleviate pressures on real estate markets in multiple sectors.

Tax incentives are fundamentally designed to increase the capital available to real estate owners and developers, and New York has embodied a two-step approach in order to direct the use of that capital. Part III of our series will explore proposed changes to zoning laws in New York City that reflect government priorities for improving the environmental sustainability of buildings and making better use of outdated properties.

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