

REBNY Testimony | November 10, 2021

## **The Real Estate Board of New York to The Committee on Housing and Buildings of the New York City Council Regarding Intro. No. 2246, Intro. No. 2312, Intro. No. 2411, and Intro. No. 2436**

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the New York City Council Committee on Housing and Buildings for the opportunity to provide testimony about Intros 2246, 2312, 2411, and 2436.

As of the most recent census, over 8.8 million people call New York City home – a 7% increase from the previous decade.<sup>1</sup> Over roughly the same period, the city gained only 206,000 new homes<sup>2</sup> – producing significantly less housing units per 1000 residents as compared to other high cost cities in the country such as San Francisco, and much, much less as compared to other growing peer cities in terms of jobs and people such as Seattle and Denver.<sup>3</sup> Our lack of housing production alone has tangible consequences for all New Yorkers: 290,000 New York households live in overcrowded conditions<sup>4</sup> and 47,979 New Yorkers sleep in the municipal shelter system each night.<sup>5</sup> What's more, approximately 68% of city households are renters<sup>6</sup>, and 26% of renters in New York City pay more than 50% of their income towards rent<sup>7</sup>.

By all indicators, New York has not kept pace with its housing needs. These indicators also show a particularly acute need for below market rate rental and supportive housing. New York's housing crisis is dire and complex and requires a multi-pronged approach of preservation, production, and conversion to meet the full breadth of need and provide options in existing neighborhoods of opportunity to tenants. To ensure increased housing supply, we need strong partners in and close collaboration between the State, the City, and the private sector, new tools and ideas, increased public investment, and cross-sector partnerships to facilitate this work.

The bills under consideration today are intended to correct the existing inequities in our housing system, to ensure a strong and equitable recovery, and to further housing production citywide. REBNY

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<sup>1</sup> [U.S. Census Bureau Quick Facts – New York City](#). Baseline population data are from 2020 and 2010.

<sup>2</sup> [NYC Planning Info Brief: Net Change in Housing Units, 2010-2020](#), NYC Department of City Planning, February 2021

<sup>3</sup> Citizens Budget Commission, [Strategies to Boost Housing Production in the New York City Metropolitan Area](#)

<sup>4</sup> "Protecting NYC's Most Vulnerable Populations During COVID-19", Office of NYC Comptroller, April 15, 2020.

<sup>5</sup> [Basic Facts About Homelessness in New York City](#); Coalition for the Homeless, August 2021.

<sup>6</sup> [State of New York City's Housing and Neighborhoods in 2020](#), Furman Center, New York.

<sup>7</sup> [State of New York City's Housing and Neighborhoods in 2020](#), Furman Center, New York.

appreciates the opportunity to provide input to help meet these goals and looks forward to continuing our partnership with the Council on these and other matters.

Bill specific comments may be found below:

**BILL:** Int 2246 - 2021

**SUBJECT:** A bill to establish the task force to study options and make recommendations for converting vacant commercial office space into affordable housing

**SPONSORS:** Council Members Brannan, Yeger, Kallos, Rosenthal, Perkins, Louis, Koslowitz, Riley, Levine, Moya, Ampy-Samuel, Gjonaj, and Dinowitz

This bill would establish an Office-to-Affordable-Housing Task Force (“Task Force”) to study options and make recommendations for converting vacant commercial office space into affordable housing. The Task Force would be chaired by the Commissioner of HPD or the Commissioner’s designee. The Task Force would also include the Commissioner of the Department of Buildings (DOB), the Speaker of the Council, and the Public Advocate, or their designees, and other members with knowledge or expertise relevant to the duties of the Task Force who would be appointed by the Mayor. The Task Force would be required to report its findings and recommendations to the Mayor, the Speaker and the Public Advocate no later than 270 days after the effective date of this local law and would publish the report on HPD’s website.

Today, there is an estimated 220 million square feet (sq ft) of Class B and C office space citywide, with approximately 160 million sq ft in Manhattan. While not all Class B and C office buildings are candidates for conversion due to economic constraints and floorplate limitations, this is a significant amount of space that could be better used in the future through a conversion.

For this reason, REBNY supports the creation of a task force to study and recommend steps that should be taken to appropriately convert vacant or underutilized office space to affordable housing. Creatively adapting existing, empty spaces or buildings will help our city bounce back faster and address long-term needs by increasing housing supply, presenting opportunities to support affordable housing development, and creating significant development activity that will result in well-paying jobs. Additionally, a true live-work community will also bolster local retail by providing neighborhood services that are less reliant on office workers.

Lower Manhattan is a prime example of how converting a neighborhood can help raise the City’s recovery from a crisis. In the early 1990s, the office vacancy rate was approaching 25%. Government programs and incentives led to the conversion of older Class B and C office space to residential use, which resulted in the creation of over 25,000 housing units over the past few decades. This activity laid the foundation for a dynamic, live-work neighborhood in Lower Manhattan and was central to the neighborhood’s recovery after the devastating impacts of 9/11, the Great Recession, and Hurricane Sandy.

Based on the success of Lower Manhattan, the task force should consider neighborhoods with great transit access and a concentration of older office buildings. Conversions in these neighborhoods could provide an additional opportunity for injecting affordable and supportive housing where there is little to none, and could potentially aid NYCHA as it explores options to aid their sizeable rehabilitation effort such as through the transfer of air rights.

However, conversions face a number of obstacles that state and local policy will need to address. First, the State's Multiple Dwelling Law caps the residential floor area ratio to 12 FAR. For commercial buildings with a higher FAR and limitations on location of uses within this building, this places a full building conversion out of reach. The multiple dwelling law will need to be changed to allow existing floor area to be converted. Additionally, residential and commercial zoning have different requirements for light and air standards as it relates to distance between buildings and court and yard requirements. This too will need to be resolved. There is also significant office space in manufacturing zones, where residential is not permitted, but has proximity to transit, schools, jobs, and open space that may make sense to consider for housing needs. Finally, some type of financial incentive program will be needed to offset the capital costs of conversions, lost rent collections, baseline affordability and ensure upgrades align with the latest sustainability targets.

For this reason, REBNY urges the Council to include the Department of City of Planning (DCP) on this task force to ensure zoning considerations are taken into account. DCP's participation seems essential considering any viable path to converting Class B/C office space to residential use will require local zoning changes.

Further, REBNY's diverse membership contains experts from various fields who are experienced in the commercial and residential markets, understand viable financing strategies, and how to develop mixed-use properties. In addition to the inclusion of DCP, REBNY would respectfully request inclusion of the real estate industry on this task force to ensure a well-rounded perspective from practitioners in the field, and that any recommendations are rooted in real world experience.

**BILL:** Int 2312 - 2021

**SUBJECT:** This bill would amend the administrative code of the city of New York, in relation to limiting fees associated with vacating a premises

**SPONSORS:** Council Members Riley, Powers, Treyger, and Rosenthal

This legislation would limit the resulting damages recoverable by certain landlords to the mitigated damages enacted by the New York State Housing Stability and Tenant Protection Act of 2019 (HSTPA) where a tenant vacates a premises in violation of the terms of a lease.

The legislation seems intended to codify a provision from HSTPA at the local level. However, it is unclear what additional value Intro 2312 adds beyond the State provision. The Council legislation effectively bars an owner from asking for rent for remaining months on the lease unless they lower the price of the unit and are still unable to rent it. It also ostensibly asks owners to absorb the costs of damages to their units despite the tenant's violation of a legally-binding agreement. At a time when the market is uncertain and owners have been asked to bear the brunt of increasing operating costs with no aid, it is punitive to ask owners to potentially utilize their savings for circumstances beyond their control.

**BILL:** Int 2411 - 2021

**SUBJECT:** This bill would amend the New York city charter and the administrative code of the city of New York, in relation to enforcement of provisions of the zoning resolution related to eligibility requirements with respect to the development, acquisition, rehabilitation, preservation, sale or rental of affordable housing administered by the department of housing preservation and development.

**SPONSORS:** Council Member Cornegy

The bill authorizes HPD to enforce the affordable housing provisions placed within its responsibility in the Zoning Resolution, namely the Inclusionary Housing program and provides procedures by which enforcement is to take place. Under this charter amendment, HPD would be authorized to issue appearances before the Office of Administrative Trials and Hearings for the recovery of penalties for violations, investigatory authority, and appointment of an authorized monitor by HPD authorized to ensure violations are corrected. The legislation also grants HPD the new authority to take any actions necessary to enforce the provisions of any regulatory agreement. According to the sponsor, without this authorization, the city would be limited in its ability to ensure that the Zoning Resolution's affordable housing programs are serving their purpose and would lack the ability to penalize those who would cheat the system.

This legislation would remove statutory enforcement authority from DOB and make HPD the primary oversight, investigative, and enforcement agency. Ensuring the agency tasked with financing and leasing-up is also responsible for enforcement rather than outsourcing it to a separate agency with no insight into the process makes sense. Clear and consistent standards are helpful to owners entering into regulatory agreements with HPD.

Clear and consistent standards must also apply in the lease up process to expedite occupancy by tenants. However, while the City has spent significant time and effort improving Housing Connect for tenants, it has not spent equal time in removing website glitches and operational enhancements for the owner facing portal, even a year after launch. Requirements for the marketing handbook have gotten more complicated over time, not less. Unfortunately, this means that the lease-up process by HPD is so lengthy it can take over a year from construction completion to tenant occupancy. Therefore, there is industry concern with vesting new authority to the agency. The framework for equal dealings with tenants and owners is not in place and the lack of an appeals process for the enforcement actions will ensure the same opaqueness and lack of timely response that the industry faces when trying to troubleshoot through other requirements by the agency. Sufficient resources should be in place for these efforts so as to not lead to delays in delivering and accessing housing.

**BILL:** Int 2436

**SUBJECT:** This bill would amend the New York city charter to establish an office of the homeowner advocate within HPD.

**SPONSORS:** Council Members Miller, Cornegy, Salamanca, Yeger, Kallos, and Dinowitz

This bill would create the Office of the Homeowner Advocate (OHA) within HPD. OHA would be tasked with providing support to homeowners and multiple dwellings. Support would include acting as a liaison between homeowners and City, State, and Federal agencies, accessing financial and technical assistance, providing referrals to homeowners, and holding trainings for homeowners. OHA would also create public awareness campaigns about the rights and responsibilities of homeowners. In addition, OHA would also be required to report annually on homeowner inquiries received, amount of time taken to address these inquiries, and actions taken to address these inquiries. Finally, OHA would be required to report on existing non for-profit organizations that provide free and low cost services to homeowners as well as recommendations for such services that are not currently available.

Providing technical assistance to homeowners and increased access to existing programs is vital to ensuring the stability of homeownership as a primary wealth-building tool for low-income owners. However, the office as envisioned by this legislation could create additional confusion for the same

owners it intends to help. Co-ops and condos should be exempted from the scope of this legislation, as the New York State Attorney General already has an ombudsperson tasked with fielding concerns from these owners. Including these buildings may lead to duplicative reporting on issues, thereby undermining the increased transparency intended by the bill and drawing down on limited city resources. In addition, the advocate would be tasked with serving as a coordinating entity between multiple agencies on behalf of City agencies. An individual city agency may not be best equipped to coordinate between levels of government and agencies and cannot and arguably should not be held accountable for service delivery from programs administered by other agencies and levels of government. The Council should consider whether this task could be best served within the Mayor's Office as a centralized role. Otherwise, the structure of the office outlined by the legislation may lead to confusion amongst owners and frustration when services are not delivered in a timely manner.

Thank you for your consideration on these points.

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