

REBNY Testimony | October 13, 2021

The Real Estate Board of New York to The New York State Assembly Standing Committees on Cities, Housing, Judiciary, and Local Governments Regarding Accessory Dwelling Units

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. Thank you to Chairs Braunstein, Cymbrowitz, Lavine, and Thiele and members of the Cities, Housing, Judiciary, and Local Governments Committees for the opportunity to provide testimony on the role of local governments in Accessory Dwelling Unit(s) (ADUs) siting.

As of the most recent census, over 8.8 million people call New York City home – a 7% increase from the previous decade.¹ Over roughly the same period, the city gained nearly 206,000 new homes². Putting aside the math of unit counts, 290,000³ New York households live in overcrowded conditions and 47,979 New Yorkers sleep in the municipal shelter system each night.⁴ By all tracked metrics – employment growth, population growth, and unit production as compared to other cities⁵ – New York City has not kept pace with its housing production needs. To ensure increased housing supply, we need strong partners in state and local governments, new tools and ideas, increased public investment, and cross-sector partnerships to facilitate this work. The City of New York’s Department of Housing Preservation and Development (HPD) report, [Where We Live NYC](#), the City’s effort to affirmatively further fair housing, calls for the expansion of housing options throughout the five boroughs. The Obama-era HUD rule on which this report is principled was coupled with a housing tool kit which keenly understood that the suppression of housing creation will create further distance between the available supply and demand of housing, in turn increasing housing costs and decreasing opportunities for neighborhood integration. The State and City must expand housing supply and seriously consider how various levers of regulation impact housing construction and job growth.

One way for the State to tackle this challenge is by allowing municipalities to legalize accessory dwelling units, including basement apartments. ADUs are one potential source of additional housing units and

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

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

³ [“Protecting NYC’s Most Vulnerable Populations During COVID-19”](#), Office of NYC Comptroller, April 15, 2020.

⁴ [Basic Facts About Homelessness in New York City: Coalition for the Homeless, August 2021](#).

⁵ “The Geography of Jobs, 2nd Edition,” October 2019, NYC Department of City Planning; Citizens Budget Commission via U.S Department of Housing and Urban Development, State of the Cities Data Systems: Building Permits Database; and U.S Census Bureau 2006-2010 American Community Survey 5-year Estimates. Baseline population data is from 2010.

REBNY is supportive of efforts to create a pathway to legalize such units. Legalizing apartments that people already live in and providing the funding to owners to make those units safer is a common-sense solution to which all should be able to agree.

Unfortunately, the specific proposal ([S.4547 Harckham](#) / [A.4854 Epstein](#)) that is under consideration by the legislature incorporates several concerning provisions that will weaken the effectiveness of this effort. Specifically, provisions in the bill that control rent increases in arbitrary ways and place draconian limits on reclaiming any legalized units will discourage enrollment in an ADU legalization program.

The legislation would effectively create a pathway for any rent increase in any year for any tenant, existing or new, to be determined an “unconscionable rent increase” in court. While the bill has language indicating that 3% or 150% of CPI, whichever is less, meets the standard, owners could be legally prohibited from raising rents by even 1% or 2% if deemed inappropriate by the courts. Even if that problematic clause was struck, 3% or 150% CPI is not reasonable either. It is no secret that multifamily rental housing is taxed at a higher assessed value than a single-family home. Adding a unit may change the class of the property and will surely change the assessment, therefore drastically increasing the tax obligation on an owner. Property taxes remain the highest operating cost to a property owner of multiple units at nearly 30%. Insurance costs will also increase and then compound over time. The law will leave no recourse for adjustment to government induced expenses.

Furthermore, the legislation would place onerous restrictions on the circumstances under which an owner can reclaim a unit. The provisions become particularly restrictive if the tenant is over the age of 62. While the goal of protecting seniors is laudable, the proposed language sets up an untenable framework if the homeowner is also elderly as it would potentially preclude an older adult from moving into the ADU and moving family members into their prior housing. This is in part due to the fact that the definition of family in this bill fails to account for multigenerational caregiving and family arrangements. Protections for older tenants need to be balanced against the needs and rights of aging property owners.

There are no income requirements to reside in the ADU or enroll in the legalization program. This means that rents may still be set at a level that is a burden to tenants or creates a perverse scenario where a fixed income or limited income property owner is subsidizing the rent for a higher income tenant. The sponsors’ memo states a clear intent to help low-income owners, but the rent cap and control provisions could inadvertently jeopardize the stability of homeownership as a primary wealth-building tool for low-income owners. As an alternative means to the statutory rent caps to address both the owner’s obligation to pay taxes and ensure stable rents for a tenant in need would be to ensure automatic referral, if not outright enrollment, in SCRIE or DRIE for eligible tenants, to abate property taxes in exchange for an abated rent.

Finally, REBNY would urge this body and the city to consider resiliency siting in the context of which units to legalize. Adding an additional means of egress and improving ventilation for a below grade or partially below grade unit can only do so much in the face of rapidly rising flood waters. Costs associated with dry flood proofing need to be considered, as well as whether such work is feasible at every home. Efforts in legalizing these apartments should be aligned with the framework required by the recently passed [Climate Hazard Planning](#) bill by the New York City Council. Program considerations should also include an amnesty program for homeowners, relocation costs and vouchers for tenants, and enforcement to ensure below-grade units are not re-leased if subject to a buy-out program.

REBNY supports the enactment of policies and allocation of resources to unlock much needed housing units across our City and our State and boost housing supply for the region. The role of localities must play a strong role in efforts to legalize ADUs, however, current proposals fall short of the mark and risk harming the very same communities they intend to help.

Thank you for the opportunity to provide testimony to the New York State Assembly, and for taking these comments into consideration.

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