



**NYSFAH Testimony before the Joint Legislative Budget Committee
2022-2023 New York State Budget
Housing Priorities and Funding
31 January 2022**

Thank you, Chairwoman Krueger, Chairwoman Weinstein, Chairman Kavanagh, Chairman Cymbrowitz, and members of this joint legislative budget committee for the opportunity to participate in today's hearing regarding the 2022-23 New York State housing budget.

NYSFAH is the trade association for New York's affordable housing industry statewide. Its 375 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSFAH's members are responsible for most of the housing built in New York State that uses federal, state and local subsidies and incentives. Founded in 1998, NYSFAH is the nation's largest affordable housing trade group.

As we have highlighted on numerous prior occasions, New York State has been in the midst of a housing crisis for many years, with millions of New Yorkers having to pay 30 to 50 percent of their incomes, *and more*, simply for housing. The Legislature has recognized that this dramatic situation was unsustainable and you have enacted policies and provided critical funding to remedy this injustice, which has resulted in the development and preservation of thousands of units of affordable housing.

Pass the Governor's 5-Year Housing Plan, as proposed. Beginning with housing finance, Governor Hochul has proposed a forward-thinking Housing Plan that would position New York to achieve the goal of 100,000 affordable units. Developing affordable housing requires predictability; and any developer who seeks to build affordable housing must be acquiring sites years before subsidy allocations. This capital plan would create such predictability. We urge you to appropriate these funds as proposed.

Fund the Landlord Rental Assistance Program. On the topic of funding, we urge the Legislature to direct more funding to the Landlord Rental Assistance Program, also known as LRAP. The program ensures small-scale landlords whose tenants have declined to participate in tenant rental assistance programs or who vacated the residence with arrears (unpaid rent) are able to receive assistance. Additionally, the LRAP program has less burdensome paperwork requirements overall, particularly for affordable housing projects with regulatory agreements as property managers have already certified residents' incomes.

Implement the ConnectAll Broadband plan. In addition to the capital plan and COVID relief, we urge the Legislature to implement the Governor's ConnectAll Broadband plan using House New York's Affordable Housing Broadband Initiative (AHBI) as a roadmap.

- This initiative is a blueprint for the connection of all affordable housing developments in the state to high-speed, affordable broadband. We will be publishing this plan in the next few weeks.
- The pandemic has exacerbated the effects of the Digital Divide. As evidenced by this virtual hearing, huge portions of life have moved online, at least on a temporary basis. A lack of affordable broadband damages the economic prospects of affordable housing residents and is a disaster for children who may have to attend school online.

Break Down Barriers to Affordable Housing. Shifting to statewide land use policy, NYSFAH has the strongest possible support for the Article 7 legislation that would affirmatively further fair housing by facilitating new affordable developments in high opportunity neighborhoods. Housing is critical, but people cannot reach their full potential without access to affordable transit, good schools, and a healthful environment.

- Sadly, residential segregation has persisted in New York. While such segregation is now illegal, what has persisted are exclusionary zoning laws that have an undeniably disparate impact on low-income people of color.
- These laws have resulted in a dire situation, and according to the University of California, New York has the most segregated school system in the country for Black students, and the second most segregated school system for Latinos. Additionally, New York City is the 9th most segregated city in the U.S., with worse numbers than Los Angeles, Philadelphia, Boston, and Washington, and even historically segregated cities, such as Dallas, Memphis, New Orleans, and Richmond.

The Executive Budget includes multiple proposals that would achieve fair housing goals, facilitate affordable housing production, and also address sustainability goals by reducing vehicle miles traveled and reducing the need for greenfield development.

- **Repeal the 12.0 cap on Residential FAR in NYC.** First, the Executive Budget has proposed the repeal of the Multiple Dwelling Law's cap on residential density in New York City. This limitation is an anachronism, and its repeal is long past due. The City will then be able to upzone high-opportunity neighborhoods and map Mandatory Inclusionary Housing, a crucial step for neighborhood integration, affirmatively furthering fair housing, and creating affordable housing at no cost to taxpayers.

- **Allow Hotel and Office conversions.** Second, we urge the Legislature to approve the proposed amendments to the Creating Housing Opportunities through Building Conversion Act, as proposed in the Executive Budget. This Act would allow for the conversion of offices and hotels currently in disuse into affordable and supportive housing in appropriate areas, with the safeguard of a regulatory agreement.
- **Allow Accessory Dwelling Units Statewide.** Third, we ask you to pass the Accessory Dwelling Unit Act of 2022, proposed in the Executive Budget. This is a crucial step for increasing housing supply statewide.
- **Transit Oriented Development.** Finally, NYSFAH's number one land use priority is for the Legislature to strengthen and pass the Transit Oriented Development Act of 2022, proposed in the Executive Budget. This proposal would affirmatively further fair housing; it would facilitate overall affordable housing production; and it would make our state more sustainable by focusing new development near transit. However, NYSFAH has specific recommendations to make the program as effective as possible.
 - **More Density.** In terms of density, the bill proposes requiring localities to allow 25 housing units per acre within ½ mile of a transit station. While this would be a significant improvement, to make the development of affordable housing feasible, this bill should require at least **50/units per acre** and should prohibit off-street parking requirements for affordable units (80% of Area Median Income and below).
 - **Provide Incentives.** Additionally, the bill should be amended to provide for incentives for localities to comply; a mandate without consequences is no mandate at all.
 - **Attorney's Fees.** Specifically, this act should be amended to allow the recovery of attorneys' fees if a locality has not modified its planning regulations to comply within two years of passage. The experience of other states, such as California, is that many localities will defy state housing mandates, requiring costly litigation to force compliance. One effective remedy is to allow applicants who must resort to litigation to recover attorneys' fees.
 - **Local Funding.** Additionally, the State should incentivize compliance by establishing financial mechanisms to offset any increased demand on services. This could include targeted property tax rebates or school funding for affected districts.

Funding for Planning and Accountability Office. We urge the Legislature to adequately fund the planning and administration of these various land use programs at the state level. We would support a centralized, empowered effort to implement these programs and ensure compliance across the state.

- Such an office could also coordinate with the Empire State Development Corporation in oversight and record keeping for projects created by ESD.

Extend the Brownfield Cleanup Program. Following on the topic of sustainability, NYSFAH strongly supports the 10-year extension of the Brownfield Cleanup Program. This program is a critical tool for the development of affordable housing across the state, and it also cleans up polluted land and reduces demand for greenfield sites.

- However, the Article 7 bill and the proposed Department of Environmental Conservation (DEC) regulations have problematic implications. Specifically, the proposed \$50,000 non-refundable fee will deter many smaller organizations, especially not-for-profits, from participation, as this is a pre-development cost that cannot be absorbed. Instead, we would propose that the Legislature adopt the New York State Bar Association's proposed fee schedule.
- Additionally, the proposed DEC regulations are highly problematic. We will be communicating a full list of these issues separately.

Scaffold Law. We urge the Legislature to reform the Scaffold Law (Labor Law §§ 240 and 241), which holds owners absolutely liable when a worker is injured in a gravity-related accident, even if the employee or third-party contractor is negligent. The law is unfair and outdated, and it has contributed to skyrocketing insurance rates and driven most insurance companies from the New York market - adding substantial costs to general liability coverage for affordable housing developments. We support reforming the law with commonsense amendments including a standard that considers the respective negligence of the builder, the employee and/or contractor in determining damages and compensation. This would save the State millions of dollars and result in more affordable housing production overall.

Thank you again for the opportunity to testify today and for your consideration of our budget requests. I welcome any questions or comments you may have.

Contact: Jolie Milstein, NYSFAH President and CEO, at jmilstein@nysafah.org and (646) 473-1208.