

The Real Estate Board of New York to The Joint Legislative Public Hearing on Fiscal Year 2022-2023 Executive Budget Proposal Topic: Housing

February 1, 2022

New York City Needs More Housing

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 appreciates the opportunity to comment on several housing provisions included in the Governor's 2022 Executive Budget.

New York City is a city of renters, with rental units comprising nearly 63% of all residential stock, and rental housing is the most important housing type for the city.¹ Even so, New York City is plagued by a shortage of rental housing units, particularly rental units for lower income households. With persistently high rates of homelessness and overcrowding,² there are simply too few available affordable options for New Yorkers' housing needs.

A key driver of New York's housing crisis is the lack of housing production. According to the most recent U.S. Census, from 2010 to 2020, the number of New York City residents grew by roughly 630,000 people, while the number of housing units grew by only 206,000. Since 2018, New York City's housing production has decreased by nearly 8,500 units³. Additionally, New York City Metro area housing production continues to fall behind most other major U.S. cities including Seattle, Austin, San Francisco, and Los Angeles.⁴ These statistics were confirmed in a recent report from the research firm AKRF,⁵ which identified that NYC needs 560,000 new units by 2030 to address both the deficit in production over the last decade and the units necessary to address future job and population growth.

This crisis is dire, complex and requires a multipronged approach of preservation, new production, and conversion of underutilized existing space to meet our needs. Such solutions require close collaboration between state and local governments and the private sector. With government resources – land and financial – limited and unable to meet our needs, the private sector must be a partner.

The Fiscal Year 2022-2023 Executive Budget housing proposals, in general, include a number of smart potential policy changes that together represent a significant effort to create more rental housing in New York City and the surrounding region. These include tools to boost production within New York City and the metro region including a new affordable housing tax tool, amending the 12 Floor Area Ratio cap, programs for

¹ [Rent Guidelines Board, 2021 Housing Supply Report.](#)

² [Basic Facts About Homelessness in New York City: Coalition for the Homeless, November 2021.](#)

³ [New York City, Housing Production Snapshot 2020, New York City Department of City Planning, April 2021](#)

⁴ [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

⁵ [AKRF Brief: New York City Housing Production Needs Study](#)

residential conversions, accessory dwelling units, and transit-oriented development, and the tools to improve housing access.

Comments specific to sections of the housing proposal follows. REBNY looks forward to partnering with the Legislature and the Governor to ensure New Yorkers have the homes they need, and to continued dialogue on these topics. Thank you for the consideration of these points.

The following proposals will facilitate rental housing production in New York City:

Affordable Neighborhoods for New Yorkers tax incentive (Part II – ELFA)

The budget proposal includes provisions to support the creation of additional housing – particularly affordable housing. This includes the creation of a new tax tool, Section 485-w of the Real Property Tax Law, titled “Affordable Neighborhoods for New Yorkers.” This program would provide a property tax abatement of up to 35 years to projects over 30 units that include at least 25% below market units rented to those making between 40 and 80% of area median income with a separate option available for projects under 30 units.

An as-of-right tax abatement is critical to support the creation of a substantial number of new significantly below market rate rental units simply because building and maintaining rental housing in NYC is expensive. Property taxes comprise approximately 30% or more of operating revenue, land costs are high and construction costs continue to increase, and the city has a highly regulated land-use process. Combined, those factors make development costs challenging for rental projects generally and below-market rental projects particularly. It is precisely for this reason that about half of the rental housing production in the City, including about 30 percent of the below market rate unit production, in the last six years was enabled by the Affordable New York (421-a(16)) program that expires on June 15, 2022.

Importantly, however, the proposed Affordable Neighborhoods for New Yorkers’ program has key differences from the “Affordable New York” tax program to ensure that it better meets the city’s needs. First, the program requires housing at lower AMI bands overall, averaging 56% AMI for buildings of 30 units or more, and a 90% AMI band for buildings less than 30 units. This includes the elimination of the 130 AMI band, which comprised approximately 35% of the affordable multi-family rental production under 421a since 2014. However, while the elimination of 130 AMI for rental housing compresses AMI bands to increase affordability levels, it also stresses economic viability of projects in medium – low rent markets.

Further, by reducing the number of options available to developers compared to the 421-a(16) program, the proposal would provide significantly more predictability to communities. It will also better align with recent local zoning changes in Gowanus and SoHo to provide opportunity for 2,000 and 750 affordable rental housing units on private land respectively in these neighborhoods. These units will not be realized if there is not an as-of-right tax abatement program along the lines of Affordable Neighborhoods for New Yorkers, as mandatory inclusionary housing is predicated on an available tax abatement to offset the high property tax burden of rental buildings. Failing to adopt a new tax tool or successor program to 421-a, then, would put these affordable units at risk and hinder any future rezonings by the Adams administration, including those that offer the potential for economic integration in higher income, heterogeneous neighborhoods.

City and State subsidies cannot replace private development as the public sector does not have sufficient resources to replace private development and still create rental housing units at scale. For example, it would require about half of HPD’s annual capital commitment plan and approximately half of HDC’s average annual allocation of volume cap to build a 100% below market rate, 1,000-unit apartment building in Manhattan, below 96th Street as permitted under existing zoning.

While a critical housing production tool, the proposed program is not perfect, and will likely result in less new housing production than the 421-a(16) program as the proposed changes will be particularly challenging for projects located in low and moderate rental markets outside Manhattan. For that reason, REBNY looks forward to working with the legislature and executive to improve the tool to ensure it meets the city's significant need for more rental housing. Among changes that are warranted include the inclusion of a robust building service prevailing wage provision along with the addition of a requirement that large projects make best efforts to provide subcontractors owned by women and minorities with work opportunities.

Amendment of the 12 FAR Cap (Part CC– ELFA)

This proposal would amend the multiple dwelling law to return authority to New York City to establish appropriate density caps for residential use and districts. While the change would eliminate the cap, New York City would still need to pass local zoning text changes to institute higher floor area ratios.

Originally implemented in Albany in 1961, the cap mandates that a residential building cannot have 12 times more square footage than the lot on which it is built. This antiquated regulation greatly reduces the ability of the city to create more housing by artificially capping residential density regardless of rational land use principles such as adjacency to transit, the city's obligations under fair housing to create access to housing in neighborhoods of opportunity, and significant changes in residential construction technology. The Regional Plan Association (RPA) made a clear and convincing argument⁶ that lifting the cap will unlock the potential to create more affordable housing by triggering Mandatory Inclusionary Housing (MIH). That's because under the MIH program the addition of new residential floor area requires that a minimum percentage of the units created from that new floor area must be permanently affordable.

Amending the cap would not weaken the public land-use process through which new projects are scrutinized, nor would it nullify the environmental studies of the potential impact of a new development in a certain neighborhood. All it would mean is that New York City has more control to determine appropriate areas to increase affordable housing production in future land use actions, and have an additional tool to relieve one of the pressures that increases the prices of our limited supply of housing.

Residential Conversions (Part DD – ELFA)

This budget proposal creates a new program, “Creating Housing Opportunities through Building Conversions Act” to convert certain Class B hotels and commercial buildings in Manhattan to residential use with an affordable housing component. This proposal is an important starting point to address the number of obstacles to conversions that State and local policy will need to address, including changes to the MDL, local zoning relief, and the need for financial tools to offset the physical costs of conversions, lost rent collections, and ensure upgrades align with the latest sustainability targets.

The pandemic's long-term impacts on office usage, commuting patterns, and our central business districts is still in flux. However, the pandemic does present an opportunity for us to rethink neighborhoods within our central business district and apply smart planning principles to assist in the city's economic recovery. Policies that prioritize as-of-right and flexible zoning will allow the market to respond as quickly and efficiently as possible. Converting certain hotels and older Class B and C office buildings to residential uses will increase housing supply, present opportunities to support affordable housing development, and create significant development activity that will result in good 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

⁶ [The Case for Lifting the FAR Cap. Regional Plan Association, January 30, 2018.](#)

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.

Today, there is an estimated 220 million square feet 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, amongst other factors, the creation of a program will permit the City to sort through these questions and benefit from opportunities where they exist. The potential for conversions in Midtown East, the Garment District, and Flatiron 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 efforts.

The following proposals will facilitate housing production in the region so that NYC does not singularly bear the region's housing needs without help:

According to a recent NYU Furman Center report, "New York stands nearly alone among its peer states in permitting its suburbs to restrict growth without regard for regional housing needs. The cost has been immeasurable: a housing affordability crisis afflicting the entire region, levels of racial segregation among the worst in the country, billions of dollars lost for the regional and national economies, and a missed opportunity to build a lower-carbon, transit-oriented region."⁷

California, Massachusetts and Connecticut have all passed legislation in the last few years explicitly to override local land use restrictions that constrain the housing supply. While New York City certainly needs more rental housing, that does not eliminate the need for the region overall to carry its fair share of meeting the regions' job growth and related housing demand. 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.

Accessory Dwelling Units (Part AA – ELFA)

Expanding the safe and legal use of accessory dwelling units in the region would help address the regional housing need. To do so, Part AAA of ELFA would, among other provisions, require local governments to authorize at least one ADU per residential lot and establish reasonable standards for structural requirements for such units.

This ADU proposal is a creative supply-side solution to addressing the enormous need for rental housing within and around NYC. ADUs are one potential source of additional housing units and 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. The tenant protection of right of first refusal is an important and appropriately balances tenant and owner rights.

Transit-Oriented Development (TOD) (Part EE– ELFA)

This proposal creates the "Transit Oriented Development Act of 2022," which requires all cities, towns and villages to permit the construction and occupation of dwelling units of at least 25 dwellings units per acre on any land where residential construction or occupation is allowed and is within .5 miles of certain transportation facilities including rail stations and bus stops.

⁷ [Models and Questions to Reform Exclusionary Zoning in New York](#) NYU Furman Center, January 2022.

Transit-oriented development is needed to address the New York City metropolitan region's housing shortage and encourage the use of mass transit to further reduce carbon emissions. With an urgent need to reduce carbon emissions, encouraging greater development near mass transit is a win-win as it will increase housing units, reliance on mass transit, and reduce carbon emissions from private vehicle travel.

As this provision is considered, we would encourage a careful evaluation of whether it could be expanded to also include the adjacent area around certain commuter rail station located in New York City. There are a number of Metro-North stations in the Bronx and Long Island Rail Road stations in Queens that share similar characteristics and land use patterns with the commuter rail stations in Westchester and Long Island and could benefit from being incorporated into this framework. These sites could also accommodate additional housing and would present an integration opportunity aligned with Fair Housing goals.

The following proposals seek to increase access to housing:

In addition to increasing overall housing supply, several proposals seek to ensure all persons have access to housing. These include:

Credit Scores (Part FF – ELFA)

This proposal creates the "Fair Chance: Reforming the Use of Credit Checks in Tenant Screening Act" that would make it unlawful for an owner of a residential premise refuse to rent to a potential tenant due to their consumer credit history or score, or lack thereof, if certain conditions are met. If the lessor wanted to deny the applicant based on credit history, they must tell the potential tenant the reasons for the denied application in writing and provide the potential tenant with the chance to show that they are covered by one of the circumstances described above within 5 days of receiving the denial.

The principal criteria for identifying if a tenant is qualified for housing should be their ability to pay without regard to the source of income from which the tenant pays their rent. REBNY looks forward to discussing this proposal with policymakers to ensure that it provides owners with reasonable tools to screen potential tenants.

Criminal Background Checks (Part BB – ELFA)

This proposal creates the "Housing Non-Discrimination for Justice-Involved Individuals Act of 2022" that would make refusing to sell, rent, lease or negotiate for the sale, rental, or lease of, or otherwise withhold a housing accommodation on the basis that an individual has been convicted of a one or more criminal offenses in New York or any other jurisdiction unlawful and discriminatory. The proposal does not prevent those screenings as required or permitted by federal or state statute or rule.

The decision to rent an apartment to a potential tenant requires not just an evaluation of that tenants ability to pay rent, but also the owner's equal obligation to tenants already in the building to provide a safe, healthy and livable environment, also known as the warrant of habitability. This is among the reasons why lease terms speak to the obligations of both parties to not engage in behavior that is dangerous, hazardous or detrimental to life, health or safety.

A proposal that seeks to limit the use of criminal background checks must address the rights of other tenants and the owner to appropriately balance the warrant of habitability with greater access to housing. Indeed, achieving this balance is important and consistent with the Fair Housing Act, which only prohibits arbitrary and overly broad bans related to criminal history. According to the U.S. Department of Housing and Urban Development (HUD), "policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction." With the need to strike this balance in mind, REBNY looks forward to continued discussion on this proposal.

Housing Voucher Expansion

In addition, to better expand access to housing, REBNY encourages the adoption of the Housing Access Voucher Program (HAVP), a permanent, statewide Section 8 -like rental assistance program as part of the state budget. Direct rental assistance is a proven cost-effective method of ensuring people can stay in their homes and access new ones if so preferred. Enabling additional and more effective use of rental assistance, especially in high-amenity areas, will expand housing choice for New Yorkers across neighborhoods.

As designed, a minimum of fifty percent of HAVP's resources will be dedicated to help homeless New Yorkers across the state find stable housing, while the remainder will go toward eviction prevention for households at risk of becoming homeless. HAVP is designed to be maximally accessible, flexible, and non-discriminatory, making it the most effective program for moving homeless households into stable, permanent housing. A state housing voucher would reach those New Yorkers left unserved by the underfunded federal Section 8 program and solve for the byzantine rules for eligibility of other like programs.

Now more than ever, New Yorkers need safe and healthy homes in which to live. The importance of a package of solutions to address housing production needs in the city, state, and region cannot be overstated. Thank you again for the consideration of these points.

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