



TESTIMONY of Basement Apartments Safe for Everyone (BASE)

New York State Senate
Finance Committee and
Assembly Ways &
Means Committee

Joint Legislative Hearing
on the FY2023-24
Executive Budget
Proposal on the subject
of Housing

Liz Krueger, Chair, Senate
Finance Committee Chair

Helene E. Weinstein,
Chair, Assembly Ways
and Means Committee

March 1, 2023

RE: Education, Labor and Family Assistance (ELFA) Article VII Legislation, Part K - Enable the City of New York to Create a Pathway to Legalize Pre-Existing Basement Dwelling Units in New York City

On behalf of Basement Apartments Safe for Everyone (BASE), thank you Chair Krueger, Chair Weinstein, members of the Senate Finance Committee and Assembly Ways & Means Committee, and fellow legislators for the opportunity to submit testimony regarding the Fiscal Year 2023-2024 Executive Budget Proposals on the subject of Housing.

Basement Apartments Safe for Everyone (BASE) is a coalition of non-profit community-based organizations, policy researchers, and legal services providers that has worked for 15 years to improve the safety and affordability of basement and cellar apartments in New York City. BASE member organizations include Chhaya Community Development Corporation, Citizens Housing and Planning Council, Cypress Hills Local Development Corporation, Center for New York City Neighborhoods, and Pratt Center for Community Development.

We strongly support legislation to enable New York City to create a local program to safely legalize basement and cellar apartments.

Basement and cellar apartments are a critical part of the city's low-income housing stock, home to tens of thousands of New Yorkers, and concentrated in Community Districts that are majority people of color and where rent burden and poverty rates are higher than the citywide average.¹ Amidst New York City's ever-worsening housing affordability crisis, many New Yorkers will continue to rely on below-grade apartments for stable housing. These units also provide a source of income for low- and moderate-income homeowners to remain in their communities. Yet, because these units are illegal and unregulated, residents lack basic tenant protections and may be living in unsafe conditions. Homeowners and tenants risk facing a vacate order and hefty fines in pursuing support to address safety issues. To ensure that these homes have adequate safety features to protect tenants and homeowners in the event of fire or the increasingly urgent citywide risk of flooding, as tragically shown by the deaths of 11 New Yorkers living in below-grade apartments during Hurricane Ida, these homes must be legalized.

Under ELFA Part K, as in [S2276/A1075](#) sponsored by Senator Kavanagh and Assembly Member Epstein, the City of New York would be granted local control to create a program to establish safety standards for below-grade apartments and create a program to bring existing units into compliance. Such a citywide program would build on lessons and successes from the City of New York's East New York Basement Conversion Pilot Program, which established eligibility criteria and safety standards including that units must be outside the 100-year floodplain, and conform to zoning and building code criteria agreed upon by a City-led Task Force that included the NYC Department of Buildings, Department of City Planning, Department of Housing Preservation and Development, and the Fire Department, the Mayor's Office, and community-based organizations. **This legislation would not automatically legalize any basement or cellar apartment, but rather empower the City to create a program to legalize safe units—while keeping guardrails in place and providing resources to make real safety improvements where needed.**

Specifically, **this legislation would make conversions of below-grade units feasible and affordable by reforming duplicative and outmoded regulatory barriers in New York's Multiple-Dwelling Law (MDL).** Under current law, below-grade units in two- and three-family small homes would become subject to the MDL upon conversion. A key learning from the East

¹ Pratt Center for Community Development, [New York's Housing Underground: 13 Years Later](#), 2021



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New York Pilot is that the MDL adds significant regulatory complexity and, most importantly, prohibitive six-figure increases to conversion costs. In two-family homes, for instance, the entire building—not just the basement units—may have to conform to the MDL. As such, current law effectively excludes two- and three-family houses from any basement conversion program, though they account for half of all potentially eligible units. There is precedent for this proposed amendment to the MDL. **The state has previously provided similar exemptions to the MDL for loft conversions, vesting authority with the City to make the necessary code changes to create safe housing in NYC.** Passing a similar MDL amendment for below-grade apartments would ensure that the city's program is as robust as possible and ensures that all tenants and homeowners of basement apartments have access to the same resources and safety measures regardless of whether they happen to be in a single-family home or a two- or three-family home.

We also urge the legislature to ensure that **legislation to enable New York City to create a program to safely convert below-grade apartments include both basements and cellars.** Cellars are the most prevalent subgrade typology in New York City, and represent 70% of all potentially eligible below-grade units identified in our internal analysis of 1-3 family homes that meet the preliminary eligibility criteria established in the East New York Pilot. The distinction between basements and cellars—50% of story height above or below curb level/grade plane—is arbitrary. One inch in either direction does not change occupant safety. Most homeowners would not know whether or not they have a basement or cellar, making outreach for program participation difficult. Further, all of the fatalities in sub-grade resulting from the floods during Hurricane Ida occurred in cellar apartments. The current version of ELFA - Part K does not clearly include cellars, which would prevent New York City from creating an effective program to safely convert sub-grade units, and would not address the safety of any of the units where tenants lost their lives during Hurricane Ida.

This legislation would enable New York City to bring housing safety standards and resources to tens and thousands of New Yorkers in currently unregulated units—including identifying and providing alternatives for those truly unsafe units. **Legalizing these units would also allow New York City and State to better track where infrastructure and other resources are needed, and invest accordingly; but as long as these apartments are in the shadows, the resources will never become available to communities.**

Basement and cellar apartments are and will continue to be an important part of New York City's housing stock, home to hundreds of thousands of vulnerable New Yorkers who are currently denied the most basic rights to housing safety. In September 2021, we saw the catastrophic effects of climate change when 11 of our neighbors died as a result of flooding in their homes caused by Hurricane Ida. Many of these tenants may have refrained from reporting unsafe conditions because doing so could mean eviction from one of the few affordable homes available in New York City. Neither the housing crisis nor climate change will wait another session; we are imploring legislators to act now.

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