The Real Estate Board of New York to the New York State Senate Finance and Assembly Ways & Means Committees Joint Legislative Budget Hearing on FY 2024-25 Executive Budget: Topic Housing

February 12, 2024

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 provide testimony on the Executive Budget proposals regarding New York City's housing needs.

New York City is in the throes of a housing crisis marked by a severe lack of new production and an absence of affordable housing needed to meet the city's diverse socioeconomic needs. Recognizing this reality, both the Mayor and Governor have set a goal of 500,000 new units in the next decade in New York City. Reaching this goal would require a significant increase in housing production over historic levels, equal to about 50,000 new units on an annual basis. We are far from that level of production. According to REBNY's December 2023 Foundation Permit Report, 9,909 units were proposed in 2023, a 78% decline from the 45,593 units proposed in 2022, and well below the roughly 50,000 units a year needed to meet the City's needs.

The private sector is a critical contributor to the production of housing. A New York Housing Conference report found that the amount of affordable housing the City can finance is typically only 20% to 30% of what the private market is building. Furthermore, since the expiration of 421a, there's been no uptick in not-for-profit or government development to make up for the deficit. This is because the construction of affordable housing by these actors is inherently constrained by the City budget capital allocation, federal policy on private activity bonds, availability of municipal land, and staffing levels at the relevant City and State housing agencies.

New York City's affordability crisis will persist without tools that allow supply to match demand, which is why increased housing development is a proven way to slow rent growth. According to research conducted by Furman Center faculty, increases in housing supply decrease or slow rent growth across a given jurisdiction and sometimes reduce rents in the surrounding area. A study by the Pew Charitable Trust echoed this finding. In addition, the Furman study shows the generation of new market rate housing allows for higher-income households to move, which frees up older, generally less expensive units for new households. A Rand Research Report focused on supporting housing affordability echoed that increased housing production will lead to increased affordability.

With these thoughts in mind, REBNY offers the following comments on the FY 2025 Executive

Budget:

Authorize New York City and the New York State Urban Development Corporation to Allow for Denser Residential Development (12 FAR) (Part Q).

The Executive Budget proposal would authorize the City, through zoning, or the State, through a general project plan, to allow residential buildings to waive or exceed 12 FAR. Originally implemented in Albany in 1961, the 12 FAR 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 which would encourage density where there is adjacency to transit, the City's goals of creating access to housing in neighborhoods of opportunity, and even significant changes in residential construction technology.

The proposal would amend the multiple dwelling law (MDL) to return authority to New York City to establish appropriate density caps for residential use and districts. It is important to emphasize that following enactment of this provision at the State level, zoning changes are still required at the local level and will apply new limits as appropriate. City action will require local land use review and will require the application of affordability requirements under the City's Mandatory Inclusionary Housing (MIH) program and environmental review for impacts on schools, traffic and other environmental issues. In addition to local public land use and environmental review, any changes to a neighborhood's density above 12 FAR would also include final adoption by the New York City Council.

Authorize Tax Incentive Benefits for Converting Commercial Property to Affordable Housing (Part R)

The Executive Budget proposes a new tax incentive, the Affordable Housing from Commercial Conversion Tax Incentive Benefits (AHCC) program, to support the development of below market rate units in conversion projects.

Over the last year, several large-scale office to residential conversions projects have been announced, estimated to deliver a few thousand market rate apartments. All have proceeded as of right. However, with many office buildings underutilized, there is the potential for many more projects. For example, City Hall's recently announced office conversions accelerator has enrolled 46 buildings seeking to convert.

To help these projects advance, the City of New York has announced its intentions to proceed with significant regulatory reforms to facilitate conversions citywide for buildings that predate 1990 through the local zoning proposal City of Yes for Housing Opportunity. The changes being contemplated address most of the regulatory barriers to conversions outlined in the Office Adaptive Reuse Task Force's 2023 study.

However, only the State can create a new tax incentive for the City to encourage affordable rental housing as part of these conversions. Part R includes several positive components including well-targeted income-restrictions and affordability levels and requirements for prevailing wage for building service workers. Further, the program is voluntary, which is particularly important in a challenging market.

However, changes are needed to ensure the program is utilized. With the requirement for permanent affordability for the income restricted units, the benefit term must be at least 30 years in recognition of the permanent reduction in revenue those income restricted units represent. This incentive, with modifications, can be priced to encourage uptake, in accordance with best practices from around the country in incentivizing mixed income rental housing production.

Extend the Project Completion Deadline for Vested Projects in Real Property Tax Law 421-a (Part T).

REBNY supports this proposal to extend the completion deadline for projects already eligible and vested for a 421a benefit by five years. Currently, projects vested for a 421a benefit before the program's expiration in June 2022, must complete construction by 2026. The proposal extends the deadline from June 15, 2026 to June 15, 2031.

According to REBNY's member survey, 33,000 units are in jeopardy of not being built or completed because of the current 2026 deadline. Over 8,200 of these units are affordable, with many required under the Mandatory Inclusionary Housing (MIH) program and therefore permanently affordable.

Many policymakers have reasonably asked for more data about projects that may benefit from an extension of the completion deadline. REBNY further analyzed publicly available building permit and other data from the City of New York to create a list of 230 multi-family buildings containing 20,276 units that may be eligible for 421-a and may benefit from an extension of the completion deadline. This data supplements REBNY's private survey, and taken together, the data presents a compelling argument that tens of thousands of housing units are in jeopardy of not being built if the 421-a completion deadline is not extended.

485-x Affordable Neighborhoods for New Yorkers (ANNY) Tax Incentive Program (Part U)

The Executive Budget includes a new section 485-x of the Real Property Tax Law, entitled Affordable Neighborhoods for New Yorkers (ANNY), to serve as an as of right replacement for the now-expired 421a program.

An as-of-right tax abatement, which for over 50 years has taken the form of a program called 421a, is critical to providing enough homes for all New Yorkers. Throughout its several iterations, 421a has proven to be a successful housing production tool. Per a report from the Furman Center, the 421a program has been responsible for the production of nearly 70% of New York City's rental housing over the past decade. Furthermore, it has produced a significant share of the city's new stabilized units since 1974.

The expiration of the 421a program in June 2022 has further exacerbated the city's already low rate of housing production. Therefore, implementing a 421a replacement program is essential in boosting the supply of rental housing, particularly in high-cost areas of the city. Without an as-of-right tax abatement, affordable housing may only be built in low-income neighborhoods where land costs make construction financially feasible.

The continuation of a tax tool like 421-a is essential to generating the housing we need to address our housing crisis, create good jobs, and keep the city's economy moving forward. REBNY looks forward to working with all stakeholders in the coming weeks to advance this important concept.

The Executive Budget currently omits much needed policy changes to improve the quality of homes for all New Yorkers.

Most of New York City's existing housing stock is at least 50 years old, with four out of five units built prior to 1974. Older buildings and the homes within them can easily fall into disrepair without ongoing upgrades and maintenance, which requires rents to keep up with expenses. Unfortunately, since the passage of the *Housing Stability and Tenant Protection Act* in 2019, the NYC Rent Guidelines Board (RGB) has found that the number of stabilized, distressed buildings has increased. This reverses the decades long decline trend in the number of deficient and distressed buildings prior to 2019.

To better understand the condition of the rent stabilized housing stock, in coordination with the Rent Stabilization Association (RSA), HR&A Advisors was commissioned to conduct an industry wide survey over the last several months to fill in significant gaps in publicly available data. Survey takers represent approximately 242,000 units, equal to about 11% of the rental stock in New York City (both rent stabilized and market-rate).

The survey affirms RGB's findings regarding the growth of expenses, especially those related to insurance costs, fuel and property taxes. The survey also sheds important insight into why some apartments may not be available to tenants. 28% of survey respondents cite economic infeasibility of unit improvements at the end of a long tenancy as a reason for continued vacancy. Nearly all small property owners with units in primarily rent stabilized buildings expressed a need for Major Capital Improvements for their buildings while more than 25% of all rent stabilized units need investment through Individual Apartment Improvements.

Keeping buildings in good physical condition for the people who live in them will require public policy that supports reinvestment in properties. REBNY strongly recommends policy interventions to allow for reinvestment and improvement of existing apartments and building systems.

Allowing buildings to convert from rental housing to homeownership also represents an opportunity for improving apartments and making building wide investments in higher quality housing. Currently, A6921-A/S3566-A sponsored by Assemblymember Epstein and Senator Cleare, proposes to expand homeownership opportunities and to preserve a portion of New York City's affordable housing beyond the term of existing and expiring government program benefits. In addition to re-activating a pipeline for homeownership opportunities, this bill also has the potential to place hundreds of new for-sale condominium units into the marketplace, resulting in potentially millions of dollars in transfer, mansion, and mortgage-recording taxes being paid to the City and State.

Fully market rate rental housing should also be able to convert to homeownership units under this standard. Traditionally, these types of conversions resulted in family sized apartments available at reasonable pricing. Making this change would not impact rent stabilized housing but certainly would increase for-sale housing stock for prospective homeowners wishing to make New York City home.

New York State Court Data shows that over 80% of eviction filings are for nonpayment. In New York City 71% of eviction filings are in rent stabilized housing, per Furman and New York Housing Conference analysis.

REBNY strongly supports policy tools that will address rent burden, help people pay the rent, and maintain quality housing. These tools include a Statewide Right to Counsel (S2721/A1493), fully staffing housing court to get tenants enrolled in existing programs, and filling gaps in the existing voucher programs to keep families stably housed with the adoption of the Housing Access Voucher Program (HAVP) (S568/A4021) a permanent, statewide Section 8-like rental assistance program. 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.

In conclusion, REBNY commends Governor Hochul for putting forward policies to address the lack of affordable housing in New York City and maximize the public benefit derived from new City-financed housing development. To effectively tackle this crisis and develop lasting solutions, we must adopt a comprehensive approach that fosters collaboration amongst the city, state, and private sector. Thank you for the opportunity to comment on these issues raised in the Executive Budget.

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