Impact of State Legislative Inaction on NYC's Affordable Housing Production

NEW YORK HOUSINGCONFERENCE

POLICY BRIEF

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Housing has been a top issue in Albany this year with Governor Hochul proposing an ambitious housing supply plan, expectations that critical real estate tax incentives would be negotiated, and a strong push for greater protections from tenant advocates. The result, after months of discussions, is the disappointing fact that no significant stand-alone housing bill has passed.

Inaction in Albany has serious consequences for housing production and preservation in New York City. **Without state legislation, New York City Mayor Eric Adams's housing plan lacks important tools to build and preserve affordable housing and production will likely decline. An outcome the City and its residents cannot afford to suffer.**

Last year, Mayor Adams launched NYC's housing plan - Housing Our Neighbors: A Blueprint for Housing and Homelessness – a plan for affordable housing development and preservation across the five boroughs over the next decade. He also launched the City of Yes zoning framework to make each neighborhood part of the housing plan and set a "moonshot" goal of adding 500k housing units over the next decade. However, in his first year of office, Mayor Adams has faced staffing challenges that have slowed down production of affordable housing. The City produced just **14,766 units of affordable housing,** including both new construction and preservation**. This is a 48 percent decrease from the average over the previous five years, which was 28,366 units.** The City produced 8,935 units of affordable housing through new construction, **7 percent less** than the average over the previous five years (9,586 units) and preserved only 5,831 units of affordable housing, **69 percent less** than the average over the previous five years, when the City preserved 18,780 units per year on average. At a time when the City is experiencing a crisis in affordable housing, this is unacceptable.

The City has the ability to fix its staffing shortages through budget and policy changes, but it is anticipated that without legislative changes relating to taxation, zoning and lending authority, production of affordable housing will inexcusably decline in New York City. While it is not possible to predict the exact impact on production, it is easy to see which programs have allowed the City to produce thousands of units of affordable housing. In this brief, NYHC outlines key legislation likely to impact NYC's affordable housing plan.

- **AFFORDABLE HOUSING IN JEOPARDY DUE TO 421A CONSTRUCTION DEADLINE**

Thousands of affordable housing units are in jeopardy of not getting built in market rate developments across NYC. Many of these units were promised to communities as part of Mandatory Inclusionary Housing (MIH) and are at risk due to an inability to meet the 421a construction completion deadline of 2026, codified in state law. Projects have stalled due to the pandemic, rising interest rates, staffing shortages and other unforeseen conditions.

The 2021 Gowanus rezoning is severely impacted. It is located in City Council District 39, which includes parts of Kensington, Borough Park, Windsor Terrace, Park Slope, Gowanus, Carroll Gardens, Cobble Hill, and the Columbia Waterfront. It is the first significant upzoning in a high-income neighborhood in more than a decade and slated to produce more than 8,000 housing units, of which 2,000 affordable units will be generated through MIH and another 1,000 will be built on city-owned land. Many of the delayed projects were impacted by staffing shortages affecting timely approvals for sites with environmental remediation. The rezoning is the product of years of arduous negotiations among community residents, neighborhood-based organizations, public agencies, private developers, and elected officials.

Only 698 units of affordable housing have been produced in district 39 since 2014 or less than 80 units annually. However, this rezoning will add residential capacity to district 39, where average household income is double the citywide average. It has the potential to move the district into the top ten affordable housing producing districts citywide, and to serve as a model for other communities. Without state action, affordable units in these construction projects may stall indefinitely and will be a tragic, needlessly huge production loss of affordable housing for the district and the city as a whole.

Legislative Status:

- This proposal was included in the executive budget but as of 5/31, no legislation has been introduced for a 421a Construction Deadline Extension.

- **ADDING AFFORDABLE HOUSING SUPPLY IN HIGH-INCOME NEIGHBORHOODS**

NYC Housing Tracker shows that affordable housing production continues to be unequally spread across the city. Most affordable housing is produced in low-income neighborhoods where land costs are least expensive. However, some high-cost neighborhoods are among the top producing districts where MIH combined with a property tax abatement have yielded significant production such as districts 33 and 26 including neighborhoods on the Brooklyn and Queens waterfronts. Three Albany reforms can help add affordable housing in high-income neighborhoods.

Tax Incentives for Rental Housing

To build affordable housing in higher income neighborhoods, the City incentivizes market rate developers with real estate tax abatements through the 421a or Affordable New York program to build rental housing with an affordable housing requirement. Where the City has upzoned (like the Gowanus rezoning) or through private zoning applications, tax incentives are coupled with Mandatory Inclusionary Housing to maximize the production of affordable housing, without using City capital subsidies. In contrast, affordable housing in low-income communities is financed with capital subsidies and typically receives a full abatement for real estate taxes.

In NYC's previous affordable housing plan, 26,000 units were produced with 421a through 2020 and 7,600 were affordable rental apartments. The amount of affordable housing the City can finance is typically only 20-30 percent[1] of what the private market is building. While the program has faced much criticism regarding income levels and the value of the benefit, which should both be reformed, NYC's current property tax structure does not incentivize new rental housing.

As 421a has lapsed, the City has lost a vital tool to incentivize rental housing over condominium development (where homeowners not developers assume the real estate tax burden) nor does it have any programs to build affordable housing in neighborhoods with high land costs. It is unlikely that districts 33 and 26 on the Brooklyn and Queens waterfront will continue to be high producers of affordable housing given the high cost of land if 421a is not replaced. **The NYC Housing Tracker shows that without as-of-right tax incentives for rental housing production, affordable housing will only be built in low-income communities. High-income neighborhoods will be off the hook to produce any affordable housing. And this will have the destructive impact of reinforcing the patterns of racial and income segregation in the City.**

Without an as-of-right tax incentive for rental housing, any future City plans to upzone neighborhoods to support more residential housing capacity with MIH affordable housing requirements will be dramatically undermined, unless they are in a low-income neighborhood and financed with city subsidy.

Legislative Status:

- 421a expired in June 2022 and as of May 2023, no replacement legislation for a rental housing tax incentive with affordability requirements has been introduced.

[1] New York Housing Conference analysis of HPD and City Planning data.

Regulatory Framework for Office Conversions

Office conversions to residential housing also offer the city an opportunity to add to residential housing supply while responding to dramatic changes in office occupancy. The City of New York convened an Office Adaptive Reuse Taskforce with a variety of experts and stakeholders to produce recommendations for a conversion framework and the NYC Department of City Planning produced a complementary study. Currently real estate taxes from offices contribute $6 billion to the City's tax base. With deeply concerning increases in office vacancy rates to 21.5 percent, the value of corresponding tax revenue may be in jeopardy. It is important for state legislation to provide for a regulatory path for conversion to address what may be distressed commercial real estate in the near future, while also adding to the City's housing supply. It is estimated that as many as 20,000 housing units can be produced by converting offices. Manhattan council districts that would likely see more housing if state legislation permits conversion in districts 1, 3, and 4. The restructuring of commercial real estate, which began before the pandemic but was accelerated by it, poses a perilous challenge to the City, but it also is a remarkable opportunity to increase the City's rental housing stock and create new, vibrant 24/7 communities.

Legislative Status:

- This proposal was part of the executive budget and a stand-alone bill to create a state regulatory framework for commercial conversions was also introduced - **S5080B** (Kavanagh) - but has not advanced out of committee.

FAR 12 Cap

NYC also faces density restrictions controlled by state legislation capping the NYC's floor area ratio at 12 FAR. Reforming the state multiple dwelling law to eliminate the FAR cap in New York City would allow the City to manage its land use to produce more housing and increase housing density. To grow we must add density. Lifting the cap will help that process take place at the necessary scale.

Legislative Status:

- This proposal was part of the executive budget. A stand-alone bill has not been introduced in the Legislature to eliminate the FAR cap, however **A6956** (Glick) would provide exempt developments from the FAR cap in certain circumstances for commercial conversions with affordability and labor requirements.

- **PREVENTING DECLINE OF HOUSING QUALITY & PRESERVING AFFORDABILITY**

Much of the City's housing work is rooted in preservation – keeping New Yorkers in homes that are affordable, safe and increasingly climate resilient. While preservation production numbers plummeted last year, two important indicators show that preservation will continue to be critical in upcoming years.

The first indicator is code violation trends - housing code complaints and violations have increased dramatically over the past 2 years, with complaints increasing 39 percent and violations increasing 54 percent, showing a need for increased enforcement, monitoring of housing quality and preservation resources. The districts with the most housing violations relative to the number of housing units in the district are districts 9 and 10 in northern Manhattan, districts 14, 15, 16, and 17 in the South Bronx, and districts 40 and 41 in central Brooklyn.

The second important indicator is expiring affordability requirements - 59,502 units of housing have affordability programs expiring over the next five years, including buildings with J-51 or 421a tax benefits, in the Mitchell Lama and Project-Based Section 8 programs, with federal Low Income Housing Tax Credits, and other HUD programs according to data from the NYU Furman Center. Despite this demand, the City's Department of Housing Preservation & Development is missing vital tools to support preservation needs over the next decade including tax incentives, loan authority and regulatory reforms to allow basement legalization.

Preservation Tax Abatement

The J-51 Property Tax Exemption and Abatement Program, which expired in 2022, has helped maintain the quality of the city's low-cost multifamily housing stock for decades. It also is a necessary tool in today's climate as many building owners deferred maintenance during the COVID-19 pandemic while labor, and material costs increased dramatically and interest rates continued to rise, making building improvements more costly. J-51 has been used in conjunction with many HPD preservation programs. In addition, a preservation tax incentive is important to encourage investments in rent stabilized housing and to help owners comply with NYC's Local Law 97 to reduce carbon emissions and meet energy efficiency standards.

Tens of thousands of apartments have utilized J51 benefits in the past. While terms of the expired program were out of date, a reformed and targeted preservation tax incentive can help encourage investment in NYC's existing housing stock again, including measures to focus on sustainability and affordability.

Legislative Status:

- **J-51 Preservation Tax Abatement Replacement - S4709A** (Kavanagh) was introduced but has not advanced out of committee. In the Assembly, the bill - **A911** (Braunstein) – differs from the Senate version.

Modernizing HPD's Loan Authority

HPD's current loan authority has not been updated for 50 years, while the City has dramatically changed, placing significant limitations on its ability to support a wide range of housing needs and limiting its ability to make programs more economically efficient.

For example, HPD may only offer 30-year loans under their current lending authority, but a 40-year term would allow them to lower costs for borrowers. This is especially important as rising interest rates have made projects more expensive requiring more city capital. Capital needs can be reduced by lengthening amortization schedules from 30 to 40 years, which also match state and federal loan terms. HPD estimates that 40-year loan terms could allow them to preserve an additional 500-1,000 units per year (5,000-10,000 units over a decade) and save between $47- $110 million depending on interest rates.

State caps on loan limit amounts prevent HPD from helping many nonprofit and for profit building owners invest in needed repairs and building system upgrades. Currently HPD cannot loan more than $35,000 per unit for moderate rehabilitation, and $60,000 per unit for 1-4 unit homes. This is inadequate and not in line with construction costs, which have increased 25% over the past 2 years. This could especially benefit low- and moderate-income homeowners in lower density neighborhoods, where homeownership rates are significantly higher than the rest of the city at 54 percent, and almost half of Black homeowners reside.

Current loan authority places limits on HPD's ability to expand first time homebuyer opportunities—an important wealth-building strategy--through downpayment assistance because it does not extend to the acquisition of 1-4 family homes, condos or cooperative units. They can currently only use limited federal dollars for this purpose.

HPD is also limited in the ownership structures it can lend to. For example, there are almost 20 Community Land Trust (CLT) initiatives throughout the city - nonprofit organizations that maintain ownership of land in perpetuity and ensure it serves a community purpose like providing affordable housing. However, the City does not have authority to lend to owners on a ground lease, which is fundamental to the structure of CLTs and necessary for any tax advantages, making this innovative affordable home ownership option difficult to fully realize its potential.

Finally, many of HPD's authorities are restrictive in that they only permit the agency to lend for housing improvements as part of larger projects. They cannot, for example, address the needs of a nonresidential facility such as an existing Mitchell Lama garage that is part of a redevelopment plan or finance improvements that are solely for climate resilience, which are necessary to reach the City's sustainability goals.

All of these limitations hinder HPD's ability to preserve affordable housing and legislation is needed allowing them to increase and expand loan authority.

Legislative Status:

- The Housing **Affordability, Resiliency, and Energy Efficiency Investment Act (HAREEIA):** **S2985C** (Kavanagh) was introduced but has not advanced out of committee. In the Assembly, the bill **A6655** (Rosenthal) differs from the Senate version.

LEGALIZATION OF BASEMENT APARTMENTS IN NYC

Illegal basement apartments have always been a significant piece of NYC's housing landscape, yet many don't meet proper safety standards, leaving more than 100,000 New Yorkers in conditions that put their health and safety at risk. Policy makers received a grim reminder of this fact when 11 people died after their basement apartments flooded during Hurricane Ida. Given the desperate need for lower rent housing options and the danger of occupying illegal basement apartments, State legislative action can provide needed reform and improve the health and safety of New Yorkers. Legalizing basement apartments and supporting conversions may also add to the City's overall housing supply especially in the low density districts.

Legislative Status:

- **Basement Apartment Legalization S2276A/A1075A** (Kavanagh/Epstein) was introduced but has not advanced out of committee.

Conclusion

New York City's affordable housing is a lifeline to its residents; new construction provides desperately needed new affordable housing while preservation programs ensure residents have decent housing while locking in affordability. The City and its residents cannot thrive without it. But affordable housing production decreased significantly last year. It is more than likely to decrease further by thousands of units if the City of New York does not have the necessary tools at its disposal to build affordable housing in every neighborhood, as well as preserve affordable housing in need of repairs, refinancing or extended affordability. If New York City is to equitably grow, to the benefit of the City and the State, State legislative action is urgently required to effectively implement its housing plan.