



## 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

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

Brian Kavanagh, Chair,  
Senate Housing  
Committee

Linda Rosenthal, Chair,  
Assembly Committee on  
Housing

February 14, 2024

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

Good afternoon Chair Krueger, Chair Weinstein, members of the Senate Finance Committee and Assembly Ways & Means Committee, Chair Kavanagh, Chair Rosenthal, members of the Senate and Assembly Housing Committees, and fellow legislators, and thank you for the opportunity to address the Fiscal Year 2024-2025 Executive Budget Proposals on Housing. I am Sylvia Morse, speaking here today on behalf of Basement Apartments Safe for Everyone (BASE), a coalition of non-profit community-based organizations, policy researchers, and legal services providers dedicated to the safety and affordability of New York City's basement and cellar apartments.

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 giving New York City the local authority to create a 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.<sup>1</sup> 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. A recent survey of residents of New York City's low-density districts found that Black homeowners were more likely than other homeowners to have struggled with mortgage payments, to rent out units in their home, and to use their basements or cellars for living space.<sup>2</sup> Yet, because these are not legally recognized homes, there are no regulations or resources available to ensure their safety and affordability. Current law prevents upgrades to better protect tenants 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. The city's only regulatory tool is to issue a vacate order, which can result in immediate homelessness for tenants with few housing options, and hefty fines and loss of income that increase housing precarity for already struggling homeowners.

Prohibition on basement and cellar apartments has failed to protect safety. The tragedies of eviction by vacate order or, worst of all, death due to fire or flood, are preventable only by legalizing this already widespread form of housing.

**Under ELFA Part S, 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**

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

<sup>2</sup> Citizens Housing Planning Council, [Home Truths: A Survey of Unmet Housing Need in Lower Density Districts](#), December 2023



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**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 New York Pilot is that the MDL adds significant regulatory complexity and, most importantly, prohibitive six-figure increases to conversion costs.<sup>3</sup> 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 conversation program, though they account for half of all potentially eligible units. During the pilot program, an astonishing two-thirds of prospective applicants were effectively barred from eligibility due to MDL restrictions. Citywide, the MDL forecloses the possibility of much-needed safety renovations on tens of thousands of subgrade units, trapping people in harm’s way.

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.

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.**

The limited, commonsense reforms to Multiple Dwelling Law proposed under ELFA Part S are imperative, and the urgency of the situation cannot be overstated. Without this regulatory relief, basement and cellar units will persist in the informal housing market and remain beyond government oversight. Tenants will be left vulnerable to subpar conditions, arbitrary eviction, or life-threatening disasters like Tropical Storm Ida in 2021 and flash flooding events since. Homeowners will be prevented from doing the right thing in bringing these residences up to code.

The power to bring safety measures to basement and cellar tenants — or conversely, the power to lock them into unsafe conditions — rests squarely with this legislature.

### **For more information, contact**

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<sup>3</sup> Citizens Housing Planning Council, [Basement Apartment Conversion Pilot Program: Interim Report](#), May 2023