

February 14, 2024

AIA New York Testimony for the 2024 Joint Legislative Budget Hearing on Housing

Thank you, Senator Krueger, Assemblymember Weinstein, Senator Kavanagh, Assemblymember Rosenthal, and members of the joint legislative budget committee for your consideration of American Institute of Architects New York's (AIANY) budget testimony. AIANY represents more than 5,000 architects and design professionals committed to positively impacting the physical and social qualities of our state.

AIANY is deeply grateful for the Legislature's commitment and partnership in addressing the challenges associated with the housing crisis by enacting policies and providing critical funding resulting in the development of thousands of affordable units. However, there is still much more to be done to dig New York out of the crippling housing crisis it faces.

The current housing crisis in New York is undeniable and has created a precarious set of circumstances for many households that is unsustainable. As a result, we have seen a sizable out-migration of working-class families earning between \$32,000 and \$65,000 followed by those earning \$104,000 to \$172,000 a year; a disproportionate amount of those families leaving the city are Black and Hispanic, according to a recent study by the Fiscal Policy Institute. According to the Community Service Society of New York's 2023 Unheard Third Survey, 47% of New Yorkers under 200% of the Federal Poverty Level (FPL) and 31% of New Yorkers over 200% of the FPL said their biggest housing problem was being able to afford rent, mortgage, and maintenance costs. Over 1 million households (53%) in NYC were considered rent burdened, and approximately 60% of this group was considered severely rent burdened, according to the State Comptroller's 2021 Report on the Cost of Living in NYC. The report also found that the average rental price in Manhattan is over \$5,000, which is no doubt connected to the failure to build affordable housing.

The high housing costs are compounded by extremely low vacancy rates in NYC leaving New Yorkers in a tenuous situation where tenants have little to no power leaving them with no choice or mobility in the housing market, especially at the lowest levels of rent. The recent NYC Housing and Vacancy Survey, conducted by the US Census Bureau every three years, found that citywide vacancy rates are the lowest they have been since 1968 at 1.41%, which is down from 4.5% in 2021. In New York, a vacancy rate of less than 5% is deemed a "housing emergency;" based on the recent survey findings, it's evident that the current situation is dire for New Yorkers. The 2023 survey found that the average NYC household has an income of \$70,000 and spends more than half of their income on rent, making them "severely rent burdened". Vacancy rates are lowest – under 1% – for lower rent levels, but the 2023 survey found that 3.39% of homes renting for more than \$2,400 were vacant and available, which is a monumental drop from the 12.64% vacancy rate in 2021. Housing of all types is needed in New York to tackle the current situation.

In addition to the housing crisis, New York is seeing record office vacancy rates as a result of the COVID-19 pandemic. The cost of commercial properties is at rates unseen since 2002, which has created a unique opportunity for office to residential conversion projects where office vacancy rates are higher than normal and residential vacancy rates are significantly lower than demand. To maximize this opportunity, there are necessary changes to state law and zoning regulations to be made to create a feasible pathway for conversion projects.

Office-to-residential conversions have been identified as a key tool in the toolbox for generating housing of all types and at all levels in a sustainable way; therefore, the state must make the following changes to expand the number of eligible properties, revise regulations and requirements to allow flexibility for the nuances of conversion projects, and enact a tax incentive program to enable the inclusion of affordable units in conversion projects.

AIA New York strongly supports multiple housing related proposals included in Governor Hochul's Fiscal Year 2025 Executive Budget in the Education, Labor, and Family Assistance Article VII Legislation. We encourage the Legislature to consider the following proposals as you negotiate and authorize the final State Budget.

- **Part Q: Authorize New York City and the New York State Urban Development Corporation to Allow for Denser Residential Development**

Since 1961, there has been a cap on floor area ratio in New York City at 12.0, which limits the size of residential buildings to 12 times the size of the lot on which they are built. The challenge with the FAR cap for conversion projects is that the cap only applies to residential buildings and many commercial buildings are greater than 12 FAR, so the cap serves as an impediment to office to residential conversions. This proposed amendment to the Multiple Dwelling Law will authorize New York City and Urban Development Corporation to determine floor area ratio via a zoning law, ordinance, or resolution, and it will remedy one of the first roadblocks to office to residential conversions.

- **Part R: Authorize Tax Incentive Benefits for Converting Commercial Property to Affordable Housing**

Without government incentives or subsidies, conversion projects with affordable units are effectively impossible. Conversion projects are expensive to start with, and adding on affordable units without balancing the cost with government assistance is not feasible. As seen with the 421g program, the tax incentive was a valuable tool for converting commercial space to residential use in Lower Manhattan; however, because the program lacked affordability requirements, there were no affordable units produced as a result of the 421g program.

A key lesson learned from the 421g program is that there are three things that need to align in order for conversions to be feasible:

1. Economic – There needs to be a significant decline in office value where there is high vacancy levels and buildings are functionally obsolete leaving owners at a fork in the road where they need to reinvest in their buildings anyway given their point in the depreciation cycle.
2. Physical – The floor plate must work for residential use.
3. Regulatory – The conversion must be allowed under the city's zoning regulations and the state's Multiple Dwelling Law, and it must not be subjected to the FAR cap.

In the current economic climate where interest rates and construction costs are high, a new tax incentive program is essential to producing housing in NYC and creating an opportunity for the inclusion of affordable units to be feasible. This bill would establish the Affordable Housing from Commercial Conversion Tax Incentive Benefits program. This proposal is critical for conversion projects to include affordable housing and create a pathway for these projects to be financially feasible.

- **Part S: Enable the City of New York to Create a Pathway to Legalize Pre-Existing Basement and Cellar Dwelling Units in New York City**

This bill would authorize NYC to establish by local law a program to provide amnesty to landlords who convert basement and cellar dwelling units currently in existence to legal dwelling units, provided they are consistent with the protection of health and safety requirements. Since these units are currently illegal and unregulated, tenants lack basic rights and may be living in unsafe conditions. This proposal would create a pathway to regulate these units and bring them up to code. Additionally, AIANY recommends defining which units should be eligible in terms of light and air, rather than the current distinction between basement and cellar units. With the goal of this proposal being the creation of safe units, light and air standards must be prioritized.

- **Part T: Extend the Project Completion Deadline for Vested Projects in the Real Property Tax Law 421a**

This bill would extend the deadline to complete a vested Real Property Tax Law 421a project from June 15, 2026 to June 15, 2031. As a result of the pandemic, construction on many residential buildings slowed leaving many projects in the 421a pipeline at risk of missing the completion deadline and no longer being eligible for the program. Many of the projects currently in the pipeline at various stages of the design and construction process are facing tough decisions about how to move forward with their project and if a change of course needs to be made. Some projects have switched from affordable to market rate or rental to co-op, which has placed a number of these valuable affordable rental units at risk. To avoid additional projects stuck in the pipeline from facing this difficult decision, AIANY urges the Legislature to extend the completion deadline for the former 421a program.

- **Part U: Create New Tax Abatement for Rental Housing Construction**

The need for an equivalent 421a program cannot be overstated. In the wake of the former program sunsetting, the challenges to build housing in NYC have been compounded by soaring interest rates and construction costs, resulting in the production of new affordable housing being unfeasible. Even with existing government subsidies, the current high-cost environment makes it difficult to build rental housing at rents that New Yorkers can afford. Many developers have indicated that they plan to wait until a new program is implemented before moving ahead with housing projects, which leaves New Yorkers in a tenuous position as the affordable housing crisis forges on. This bill would establish the Affordable Neighborhoods for New Yorkers Tax Incentive Program to replace to expire 421a program. This proposal would apply to both homeownership developments and rental units. AIANY heartily supports to create of new housing of all types and prices, and this proposal is an essential tool to do so.

An additional change to the Multiple Dwelling Law missing from the FY2025 Executive Budget that is needed to be made in order to open up the fully scale of opportunities for office to residential conversion projects is to amend the date conversions are permitted from 1961 to 1990. Currently, this arbitrary date is restricting conversions of a number of commercial sites to residential use. By extending the date to 1990, approximately 120 million square feet of office buildings will be eligible for conversion.

In addition, the 1961 date restricts conversion projects with tenants in unit. One of the many challenges with conversion projects is that buildings are often not entirely empty, and it is often too costly to buy or wait out tenants' leases. For buildings built before 1961, this is not an issue, and conversions can begin with tenants in

unit and the construction can take place around the tenant; however, for buildings built after 1961, they are prohibited from conversion with a single tenant in place.

Additionally, AIANY is supportive of legislation – [S05560/A2508](#), [A06670](#), and [S05172-A/A05342-A](#) – to encourage transit-oriented development and legalize accessory dwelling units. Transit-oriented development is an important tool to increase housing stock, encourage use of public transit, reduce greenhouse gas emissions, promote local economic development, and increase social and economic mobility for New York’s population across the state. Additionally, it helps to create neighborhoods with a mix of affordable and market rate housing, which can help to reduce income and racial segregation in the city. Accessory dwelling units (ADU) are another tool in the toolbox to generate housing and create opportunities to build wealth. For homeowners, ADUs can create a supplemental source of income that can be used to help pay for property taxes and expenses. They can also serve as supportive housing to enable seniors to age in place and have live-in caretakers or provide housing at a manageable price for adult children. This tool can help allow people to live in their neighborhood of choice as the cost of housing rises dramatically, and it provides a housing option for people who are unable to live near their job or family in exclusionary neighborhoods with little to no affordable housing.

AIANY encourages the legislature to consider these proposals as you negotiate and authorize the final Fiscal Year 2025 State Budget.