



Dear Senators and Assembly Members:

Thank you for the opportunity to testify on the state budget. My name is Casey Berkovitz; over the past year, I have been working to coordinate the broad coalition of advocates who have weighed in to support the legalization of accessory dwelling units in New York State, some of whom are also testifying today.

New York is undeniably in the throes of a housing crisis. There are almost 2.8 million households in the state that are housing cost burdened, meaning they pay over 30% of their income on housing costs, including 28 percent of homeowners and 52 percent of renters. In addition, the state has the most Black-white racial segregation in the nation (measured by the dissimilarity index, a common method of measuring residential segregation). Furthermore, too much of our housing is overcrowded, unsafe, or vulnerable to the climate crisis, exemplified by tragedies that have become all too common: the spread of COVID-19 due to overcrowding, the heartbreaking tragedy during Hurricane Ida, and more.

These crises can not be solved with one policy alone, as you are considering a wide range of policies today and over the course of the budget process, but legalizing accessory dwelling units, or ADUs, across the state can be an important part of the solution to all of these challenges. **Governor Hochul showed great leadership in proposing to legalize ADUs in her Executive Budget proposal, as have members of the legislature who have signed on to support a substantially similar effort in the Senate (S4547A) and Assembly (A4854A), and I urge you to carry this policy forward in your one-house budgets and final adopted budget this spring.**

ADUs can take many forms depending on what part of the state that you are in, but they are an important housing option in all communities, whether they take the form of “in-law” or “mother-daughter” units, backyard cottages, garage conversions, or basement apartments. By legalizing these accessory home types, you can create extra income for homeowners, safe and affordable housing for tenants, give seniors the ability to age in place, and foster healthy, diverse communities.

Though reliable data on households with or living in secondary units is hard to come by, in part because of their prohibition in many places, a study of Babylon, Long Island shows how legalizing these types of homes can be a win for all parties. Rent for accessory homes was 35 percent more affordable, on average, than non-accessory homes, providing New Yorkers much-needed access to affordable housing. At the same time, the rental income from these units helps middle-class families: in that study, homeowners with accessory units had incomes that were on average 23 percent lower than for those without.

Taking a more systemic view, allowing more secondary units can provide critical housing growth without significantly changing the built environment of a neighborhood, increase property values and thus local revenues, and provide socioeconomic integration in places where restrictive zoning has historically excluded lower-income residents.

Furthermore, they can be rented out or used as living space for a family member or care provider, a particularly relevant need as New Yorkers age. A survey of AARP members, for example, found that 77 percent want to live in their community for as long as possible, and 70 percent said they would consider building a secondary unit for a loved one who needs care.



Given all of these benefits, it is no surprise that hundreds of thousands of New Yorkers are already taking advantage of accessory homes, either as owners or tenants. Because of inconsistent oversight of the number of unregistered ADUs that already exist, and complicated factors about where they can be created, estimates vary widely. New York City estimates that there are at least 50,000 basement apartments housing over 100,000 people in the city; on the other hand, the Basement Apartments Safe for Everyone (BASE) campaign estimates that there are 209,700 properties in New York City that could be conversions under the existing regulatory model. On Long Island, there are already 90,000–100,000 existing, unregulated accessory homes, according to a report from Long Island Index. The Regional Plan Association estimates that with policy changes to legalize ADUs, another 307,000 units could be created or brought into regulated status across New York City, Long Island, and the Hudson Valley. Along the same lines, the BASE Campaign has identified more than 400,000 properties in New York City alone that could become apartments under an improved regulatory model from the city and state.

Unfortunately, due to overly onerous local regulations and approval requirements, hundreds of thousands of New Yorkers—both tenants and homeowners—have been left without a pathway for bringing their homes into compliance and up to code; instead, tenants have often been left in dangerous situations, most tragically seen in deaths due to flooding from Ida last year. Even in more everyday situations, tenants in unregulated ADUs are left without legal protections such as the right to proper eviction procedures and safety inspections; in the summer of 2020, during the worst of the COVID-19 pandemic in New York and when there was a statewide eviction moratorium, basement apartment tenants were forced out of their homes. ADU legalization is the only path for public officials to effectively serve individuals living in unregulated units, and for those tenants to be able to assert their right to a safe home without fear of eviction.

Additionally, the status quo of locality-by-locality regulations has left a patchwork of oversight that leaves homeowners who *want* to observe important safety regulations flummoxed, and who then often resort to illegal, unregulated accessory rentals that have no safety protections at all. As homeowners Ruhel and Rupy Khan wrote in an op-ed for the *New York Daily News*, “Why should a New York City homeowner be able to earn spare income by renting their basement out, as we do, while someone just a short drive away is banned from building an in-law unit in their backyard for a relative or health aide?” In Glen Cove, along the North Shore of Nassau County, for example, accessory homes are banned entirely, while in nearby Oyster Bay Cove, just east, accessory homes built before 1988 are legal and can house anyone, while newer accessory homes can only be lived in by domestic employees or caretakers. This lack of consistent oversight, aside from creating confusion and leading even those with the means to build fully legal accessory units to keep them unregulated, has also contributed to regional segregation and inequality, providing safe and affordable housing and boosting the local economy in some towns, while others see younger generations leaving for lack of affordable housing.

Only the state has the scope of oversight, the resources, and the ability to ensure that ADU policy can work for everybody. The legalization measures proposed in the Executive Budget would not impose a top-down, uniform zoning code; rather, it would set a “floor” of regulations for local governments to meet, while also providing technical assistance and funding for both local governments and homeowners to access the benefits of ADUs.

All of this being said, there are critical improvements that the legislature can make to Governor Hochul’s ADU legalization proposal that would make the policy even more effective: an update to the Multiple Dwelling Law provision, application of the state’s Human Rights Law, and greater safety measures to protect ADU tenants.



The Governor's Executive Budget proposes that New York City shall create an amnesty program for existing, unregulated units (Education, Labor and Family Assistance Article VII Bill, Part AA, Section 11), and that it shall waive portions of the MDL as necessary. This is a worthwhile inclusion, but if New Yorkers are to fully benefit from ADU legalization, homes and properties outside of that amnesty program must also be exempt from portions of the MDL. In particular, if the addition of an accessory unit would require that an entire property be in compliance with the MDL (from two- to three-unit properties), it effectively precludes that property from building or bringing an ADU up to code. Evidence from the East New York basement pilot program shows what a cost-prohibitive obstacle this can be. Instead, I urge you to exempt properties from the MDL if the addition of an accessory home would otherwise require changes to comply with its requirements.

Secondly, I hope you will make changes to the legalization measures that have been proposed in order to apply the state's anti-discrimination Human Rights Law to accessory homes. A critical benefit of ADU legalization is creating diverse communities without significantly altering the built environment, but these integratory benefits are at risk if ADU tenants (or potential tenants) are not protected from discrimination. This can be done by clarifying that accessory homes are "housing accommodations," and by adding the following language to Paragraph 5 (a) of Section 296 of the Human Rights Law:

*"In the case of an accessory dwelling unit as defined in subdivision one of section four hundred eighty of the real property law, the exemption from the provisions of this paragraph (a) for the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such accommodations, shall not apply."*

There are a number of steps that you can take to ensure the safety of ADU tenants. An amnesty program, as included in the Executive Budget, is one option, providing an incentive for homeowners to make repairs and bring units up to code without the fear of retribution. Financial assistance, whether in the form of loans or grants, is also critical to ensuring that low- and middle-income New Yorkers are not locked out of the benefits of ADUs—including to bring existing, unregulated units up to code.

The benefits of legalizing and providing funding for basement apartments, in-law units, garage conversions, and other accessory homes are clear and widespread. New York has an opportunity to act—creating affordable housing, providing extra income, and integrating our state's communities, all with one well-crafted policy.

Thank you,

Casey Berkovitz  
ADU NY