

The New York City
Council Committee on
Housing and Buildings

Re: T2023-2822 and Res 0161-2022
Accessory Dwelling Units and a Pathway to Basement Legalization and Resolution calling upon the New York State Legislature to pass and the Governor to sign A.9802/S.8783

Pierina Ana Sanchez,
Chair
January 24, 2023
Remote Hearing

Good afternoon Chair Sanchez and members of the Committee on Housing and Buildings, and thank you for holding this hearing on the urgent issue of basement legalization. I am Sylvia Morse, Policy Program Manager at the Pratt Center for Community Development, which has been working on basement apartment safety for fifteen years with the Basement Apartments Safe for Everyone (BASE) coalition.

Note: This testimony reflects the position of Pratt Center for Community Development and not necessarily Pratt Institute

Basement apartment safety and affordability disproportionately affects low-income tenants and homeowners of color living at the forefront of climate change. **We urge this Committee and the City Council to pass Resolution 161 in support of State legislation to help legalize basement apartments in New York City**, and to continue to work with advocates and City Hall to pass city regulatory reforms and budgets in support of a citywide basement conversion program.

1. *Basement apartment safety is a racial, economic, and climate justice issue*

Basement apartments are a critical part of the city's low-income housing stock, home to tens of thousands of New Yorkers, many of whom are working class immigrants and people of color. **Pratt Center's 2021 report, *New York's Housing Underground: 13 Years Later* found that unaccounted-for housing units are concentrated in Community Districts that are majority people of color and where rent burden and poverty rates are higher than the citywide average.** Amidst New York City's ever-worsening housing affordability crisis, in which less than 1% of apartments renting for less than \$1,500 a month are vacant, many low-income New Yorkers will continue to rely on basement apartments for stable housing. Yet, because this housing is unregulated, residents lack basic tenant protections and may be living in unsafe conditions. To ensure that these homes have adequate safety features to protect tenants and homeowners 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 basements during Hurricane Ida, basement apartments must be legalized.

New York City has made some strides in recognizing the importance of legalization to ensure basement apartment safety, most notably through the creation of the East New York Basement Apartment Conversion Pilot Program. The Pilot established basement conversion eligibility criteria that can be built upon for a citywide program, 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. **We know how to safely convert basement apartments, but more urgent action is needed to complete the pilot and enact a citywide program.**

2. *The Pathway to Basement Legalization*

a. *State-level regulatory reform. Pass Res 0161-2022 calling upon the New York State Legislature to pass and the Governor to sign A.9802/S.8783 to enable New York City to create a basement legalization program and reduce conversion costs*

The most crucial next step on the pathway to basement legalization in New York City is amending State law to allow New York City to create a basement apartment conversion program, as proposed in the state bill S8783/A9802 introduced by Assembly Member Epstein and Senator Kavanagh last year, and most recently echoed in Governor Hochul's Housing Compact. Under current law, two- and three-family small homes would become subject to the state's Multiple-Dwelling Law (MDL) upon converting a basement unit. A key learning from the East New York Pilot is that this adds significant regulatory complexity and, most importantly, prohibitive six-figure increases to conversion costs. Contrary to some reports that suggest the pilot shows that basement conversions are too costly for citywide implementation, aligning state and city regulations would significantly reduce costs while ensuring uniform safety standards. **According**

to Pratt Center's internal analysis, half of the city's potentially-convertible basement and cellar units are in two- and three-family homes which would be effectively excluded from a basement conversion program absent State reform. State legislation to grant New York City "amnesty" from the MDL for basement conversions would allow the city both to carry out its promise for the East New York Pilot and to create a robust citywide basement conversion program in which all small homes are subject to the same safety standards for conversions. **We urge this Committee and the City Council to pass Resolution 161 in support of an amendment to the New York Multiple-Dwelling Law** and show strong support for the city's many vulnerable tenants and homeowners who rely on basement housing.

b. Creation of a Citywide Basement Legalization Program, zoning reform, and funding

Significant regulatory reform and investment will also be needed at the City level. Following the passage of state MDL reform, the City will need to enact its own regulatory relief package to establish a citywide basements legalization program. **The City will need to enact zoning changes to enable basement and cellar conversions, including allowing accessory dwelling units, amending parking requirements, and addressing how cellar conversions are accounted for in FAR calculations.** While we are encouraged that the city has signaled support for these zoning text amendments, they are not expected to go through ULURP until 2024. City Council members will play a key role in the public's understanding of the necessity of zoning changes for basement conversions as a housing justice issue, and ultimately in the approval of these reforms.

Beyond regulatory reform, the city will also need to ensure that the basement conversion program is included in the city budget with adequate resources for low-income homeowners to access the program and strong tenant protections. Further, while basement legalization and conversions are necessary to ensure that units meet basic safety standards, the city must invest in additional climate resiliency and flood risk mitigations at the property level and across neighborhoods. Basement apartment safety requires not just in-unit upgrades but a broader climate adaptation and flood mitigation strategy including infrastructure upgrades to the city's sewer system and expanding the porous pavement program and Flood Sensor Network.

Basement apartments are at the nexus of our housing and climate crises, both of which disproportionately affect low-income people of color. Legalizing basements and cellars as accessory dwelling units will, first and foremost, help prevent deaths like the drownings during Hurricane Ida by ensuring units are up to code and that emergency outreach efforts can reach basement residents where they live. Recognizing basement housing will also help prevent displacement of low-income tenants and homeowners and preserve and increase the stock of low- and moderate-income apartments citywide. We appreciate the Committee on Housing and Building Safety drawing attention to this urgent housing and climate justice issue, and look forward to working with the City Council to take decisive action for basement apartment legalization and safety.

For more information, contact

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